

A Consideration of Japan's Participation in International Military Operations: Elaborating the Normative Principles of Just War Theory

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A Consideration of Japan's Participation in International Military Operations: Elaborating the Normative Principles of Just War Theory

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Abstract

This dissertation focuses on answering whether the Government of Japan considered the normative principles of Just War Theory when deciding to participate in international military operations. Just War Theory, which has its origins in Ancient Rome and influenced to international law on war, has been developed to explain the elements which government leaders and soldiers must observe when participating in international military operations. By focusing on the importance of considering the normative principles of Just War Theory, this dissertation examines whether the Government of Japan considered the normative principles when decided to participate in the 2001 Afghanistan War and the 2003 Iraqi War. It also examines whether the government considered the normative principles of Just War Theory when enacting Japan's Legislation for Peace and Security because it enables Japan to participate in international military operations without enacting any temporary statutes as had been required before.

By examining whether the perspectives of the Government of Japan on participating in recent international military operations accord with the normative principles of Just War Theory, this dissertation points out the contribution and the necessity for further study in the two different fields of study, Japanese Studies and jurisprudence, because there have been several international conflicts between Japan and its neighbouring countries, such as China, North Korea, South Korea, and Russia. This dissertation, therefore, offers guideline for Japan in seeking to resolve international conflicts with those countries, so as to maintain peace and order in international society.

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Abbreviations

9/11: Attacks of 11 September, 2001

ASEAN: Association of South-East Asian Nations

ATSMML: Anti-Terrorism Special Measures Law

CPA: Coalition Provisional Authority

DPJ: Democratic Party of Japan

GATT: General Agreement on Tariffs and Trade

GOJ: Government of Japan

ICISS: International Commission on Intervention and State Sovereignty

IEA: International Energy Agency

IMF: International Monetary Fund

IR: International Relations

ISIS: Islamic State of Iraq and Syria

JCL: Japanese Constitution Law

JCP: Japan Communist Party

JMSDF: Japan Maritime Self Defence Force

JOGMEG: Japan, Oil, Gas and Metals National Corporation

JSDF: Japan Self Defence Force

LDP: Liberal Democratic Party

MOFA: Ministry of Foreign Affairs of Japan

NATO: North Atlantic Treaty Organization

OEF: Operation Enduring Freedom

OIF: Operation Iraqi Freedom

ORHA: Office for Reconstruction and Humanitarian Assistance

PCJ: Penal Code of Japan

PKO: Peacekeeping Operation

PM: Prime Minister

SMHRA: Special Measures on Humanitarian and Reconstruction Assistance in Iraq

TNC: Three New Conditions

UK: United Kingdom

UN: United Nations

UNHCR: United Nations High Commissioner for Refugees

UNMISS: United Nations Mission in South Sudan

UNSCR: United Nations Security Council Resolution

US: United States of America

WMD: Weapon of Mass Destruction

WWII: World War II

Glossary of Japanese Terms

<i>Anzen kakuho</i>	Safety-ensuring
<i>Buryoku kōgeki jitai taisho hō</i>	the Armed Attack Situations Response Act
<i>Gaiatsu</i>	External Pressure
<i>Heiwa anzen hōsei</i>	Japan's Legislation for Peace and Security
<i>Heiwa anzen hōsei seibi hō</i>	the Peace and Security Legislation Development Act
<i>Hitsuyō saiteigendo</i>	Minimum Extent Necessary
<i>Iraku ni okeru jindō fukkō shien katsudō oyobi anzen kakuho shien katsudō no jissai ni kansuru tokubetsu sochi hō</i>	the Special Measures on Humanitarian and Reconstruction Assistance in Iraq
<i>Jieitai</i>	the Japanese Self-Defence Force
<i>Jieitai hō</i>	the Japanese Self-Defence Forces Law
<i>Jiyu Minshu tō</i>	Liberal Democratic Party of Japan
<i>Kankei kakuryō kaigi</i>	An Informal Meeting of Relevant Cabinet Ministers
<i>Nihonkoku kenpō</i>	the Constitution of Japan
<i>Kihon keikaku</i>	the General Plan
<i>Kinkyū hinan</i>	Act of Necessity
<i>Kokusai heiwa kyodō taisho jitai</i>	An International Peace Cooperative Situation
<i>Kokusai heiwa shien hō</i>	the International Peace Support Act
<i>Kokusairengoheiwaijikkatsudo-to ni taisuru kyoryoku ni kansuru horitsu</i>	the Act on Cooperation with the United Nations Peace Keeping Activities
<i>Kuni no sonritu wo mattōshi, kokumin wo mamoru tameno kireme no nai anzen hoshō hōsei no seibi nit suite</i>	the Decision on Development of Seamless Security Legislation to Ensure Japan's Survival and Protect its People
<i>Minshu-tō</i>	Democratic Party of Japan
<i>Seitō bōei</i>	legitimate self-defence
<i>Shuhen jitai hō</i>	the 1999 Surrounding Area Emergency Measures Law
<i>Sonritsu kiki jitai</i>	A Situation that Poses a Threat to its Survival
<i>Tero taisaku tokuso hō</i>	the Anti-Terrorism Special Measures Law

Notes on the Text

Japanese names are written using surname first and given name second. Japanese terms, such as the names of Japanese regulations, are transcribed with macrons, except for place-names that are well-known in English, such as Tokyo.

Introduction

More than 70 years have passed since the United Nations (UN) was instituted to maintain international peace and security; however, stability has not yet been achieved in the international order and the instability is evident in the sheer numbers of international armed attacks. Resolving this issue, however, is no easy objective, given the difficulty of prosecuting the offenders under public international law on war. Notwithstanding the legal limitations, various international organisations, such as the International Commission on Intervention and State Sovereignty (ICISS), have urged the necessity of finding and implementing effective solutions, because the committee members and their peers believe in the necessity to maintain peace and stability in international society. It can, therefore, be observed that international society has been seeking to reduce the numbers of international armed attacks.

Based on the necessity to control the numbers of international armed attacks, some jurisprudence scholars claim to have found a solution in Just War Theory, which has been influential for public international law on wars, because it provides a doctrine for states to act the justifiable way in potential conflict situation. The theory has been adopted by some politicians, such as Tony Blair, former British Prime Minister, (term of office: 2 May 1997 - 27 June 2007) and Michael Ignatieff, former Canadian President, (term of office: 10 December 2008 - 2 May 2011), when deciding to participate in actual international military operations targeting the abolition of international armed attacks.

Michael Ignatieff, for instance, evaluates that the Kosovo War to have been strictly illegal under public international law on war, but it was legitimate and even necessary from a moral-philosophical perspective (Ignatieff, 2003, p. v). Tony Blair also found a just cause to attack Iraq when he and the former United States (US) President George W. Bush made a joint press conference at Camp David in 2003: “ (...) though of course our aim is to rid Iraq of weapons of mass destruction and make our world more secure, the justice of our cause lies in the liberation of the Iraqi people, and to them we say we will liberate you, the day of your freedom draws near” (Blair, 27 March 2003). While politicians adopt the normative principles when deciding to conduct international military operations, the jurisprudence scholars, such as Michael Walzer and Larry May, have reviewed the governmental decisions to launch international military operations under the normative principles of Just War Theory to develop a theory that is applicable to the practice. Thus, Just War Theory has played an important role for politicians when engaging in international military operations and for jurisprudence scholars when evaluating the government decision on participating in international military operations.

While politicians, particularly in Western countries, have focused on Just War Theory when forming policy for international military operations to maintain international peace and security, this dissertation will examine whether the Government of Japan (GOJ) took the normative principles of Just War Theory into consideration when deciding to participate in various international military operations. In concrete terms, Japan has twice dispatched Japanese Self Defence Forces (JSDF) personnel for the

purpose of preserving international peace and order: the Koizumi administration sent the JSDF to the Indian Ocean to support the US during both the 2001 Afghanistan War and the 2003 Iraqi War. The decision to dispatch the JSDF took the national and international community by surprise, as Japan had refused to dispatch forces during the 1990 Gulf War. Thus, the decision to dispatch the JSDF to engage in two different international military operations was a significant internal matter because it potentially violated Article 9 of the Japanese Constitution Law (JCL), which specifies the renunciation of war and potential war. These governmental decisions were also meaningful from an international perspective, particularly for the US: in dispatching the JSDF within the framework of the US-Japan alliance, the GOJ seemingly manifested its intent to strengthen US-Japan relations.

Seeking to enable Japan to participate in international military operations to maintain international peace and order, the Koizumi Junichirō administration (term of office: 24 April 2001 - 26 September 2006) and the second Abe Shinzō administration (term of office: 26 December 2012 - present) have pursued changes to Japanese security policies without attempting to revise the JCL, particularly Article 9. The Koizumi administration, for instance, enacted two temporary statutes to dispatch JSDF personnel to provide logistical support to the US military. Subsequently, the second Abe administration enacted legislation allowing Japan to participate in international military operations without enacting any temporary statutes or revising Article 9 of the JCL. Through these governmental decisions which have enabled Japan to participate in

contemporary international military operations, it seems the GOJ has sought to establish a reputation for attempting to preserve international stability. Therefore, this dissertation will describe the political elements that the GOJ has considered when deciding whether or not to provide logistical support to the US and to participate in international military operations to maintain international and national order. It will then examine whether the GOJ's perspectives on participating in recent international military operations accord with the normative principles of countermeasures to international armed attacks. By examining, this dissertation seeks to answer the following research question: whether or not the GOJ took the normative principles of Just War Theory into consideration when deciding to participate in international military operations. By answering the research question, this dissertation seeks to point out the necessity for further research in this area because there have been several international conflicts between Japan and its neighbouring countries, such as China, North Korea, South Korean, and Russia. This dissertation, therefore, offers guideline for Japan in seeking to resolve international conflicts with those countries, so as to maintain international peace and order in international society.

Chapter One reviews the existing literature on Japan's participation in international military operations and its security policy. As noted earlier, the Koizumi administration decided to dispatch the JSDF to participate in two international military operations being conducted by the US, while the second Abe administration passed the Japan's Legislation for Peace and Security to allow Japan to expand its military

capabilities. Reviewing the existing literature on Japan's participation in international military operations and its security policy, this chapter considers whether the prior literature reviewed Japan's governmental decisions on participating in international military operations with the normative principles of Just War Theory. To demonstrate the importance of the normative dimension in governmental policy-making, the first section introduces the literature on governmental decisions to participate in international military operations under the normative principles of Just War Theory. By reviewing the literature, an attempt is made to understand the necessity of reviewing governmental decisions to participate in international military operations from the moral-philosophical standpoint. The second section outlines how constitutional scholars in Japan have evaluated Japan's participation in such operations. This review argues that, while the JCL specifies renunciation of war, the GOJ decided nevertheless to dispatch the JSDF to participate in international military operations; however, it also provides some supportive points to the GOJ which can be theoretically developed to allow for the possibility of participating in international military operations. The third section outlines the literature on how Japan's behaviour in participating in international military operations have been reviewed by International Relations (IR)-derived theories, such as realism (neo-realism), liberalism (neo-liberalism), and constructivism. By reviewing the existing literature on Japan's participation in international military operations, it is concluded that prior works do not address whether the GOJ considered the normative principles of Just War Theory when deciding to participate. Consequently, this dissertation aims to review Japan's participations in international military operations from the moral-philosophical

perspective to fill in the gap between those elements that the GOJ did take into consideration and those that it should have considered when deciding to participate in international military operations. To achieve the aim set for this dissertation, this dissertation raises the following research question: whether or not the GOJ took the normative principles of Just War Theory into consideration when deciding to participate in international military operations.

To answer the research question proposed above, Chapter Two develops the theoretical approach by elaborating the normative principles of Just War Theory. As the basis of these normative principles, Just War Theory asserts the necessity for sovereign states to pursue the ideal aim of international peace and order, particularly in protecting human rights. Many jurists have thus advocated the necessity to consider moral-philosophical principles dating back to Ancient Rome. Therefore, the first section introduces the influence of moral-philosophical considerations on how to conduct wars with reference to public international law, particularly war treaties. By referring to moral philosophy, it is possible to identify the normative principles of Just War Theory is the basis of public international law on wars. As various formulations of Just War Theory have been developed by jurisprudence scholars, it is essential to elaborate a version of the theory that is must applicable to and suitable for this dissertation. The works of Michael Walzer (1977), John Rawls (2002), Larry May (2007), and Brian Orend (2007) are used to elucidate the main criteria for engaging in international military operations. By consulting these works, this dissertation clarifies specific elements for states to consider

when determining whether or not to participate in international operations.

Chapter Three explores Japan's first participation in international military operations, the 2001 Afghanistan War (OEF), and examines whether the GOJ took the normative principles of Just War Theory into consideration when deciding to send the Japan Maritime Self-Defence Force (JMSDF) to the Indian Ocean. As the first case of Japan's participation in such operations, this is an essential example for academic examination. By way of background, the OEF was launched in retaliation for the 9/11 terrorist attacks. Therefore, the details of this crucial event are introduced in the first section. The second section, then, outlines the Koizumi Cabinet's aim in participating in OEF, for which purpose the so-called Anti-Terrorism Special Measures Law (ATSMML) was enacted as a temporary regulation to authorise the dispatch of the JSDF overseas. The third section reviews discussions in the Diet on Japan's participation in OEF. Since it is difficult to analyse all such discussions, the focus is limited to four points. The first is whether the GOJ found the right intention or a just cause for participation in OEF. As Article 2.4 of the UN Charter forbids the use of force, international military operations are, in principle, banned. However, under Article 51 of the UN Charter, all UN members may exercise military force if just cause is found. Therefore, we examine whether the GOJ considered a just cause in evaluating their decision-making for OEF. The second point is the quality and quantity of OEF. As the principle of proportionality in *jus ad bellum* specifies the importance of considering the scale of international military operations, this dissertation investigates the related discussion in the Diet. The third point

is the role played by JSDF personnel in OEF. This point refers to the principle of necessity in *jus in bello* and analyses whether Diet members considered in what situations JSDF personnel may take military action against others. The fourth point is the scale of Japan's actions in OEF. The JSDF had already been dispatched outside of Japan for peacekeeping operations (PKO), when the Miyazawa Kiichi administration (term of office: 5 November 1991 - 9 August 1993) sent forces to Cambodia in 1992. However, OEF was the first time the JSDF was dispatched to participate in an international military operation. Therefore, it was necessary for the GOJ to consider the scale of the JSDF's role in OEF before participating in the operation. Through these analyses, we will clarify the elements considered by the GOJ in the course of its decision-making. This review enables comparison between those elements considered by the GOJ and the normative criteria proposed by Just War Theory. In examining whether the GOJ took the normative principles of *jus ad bellum* and *jus in bello* into consideration in the case of OEF, the gap between their actual consideration and the normative principles is elucidated in the fourth and fifth sections of this chapter.

Chapter Four, which concerns the 2003 invasion of Iraq (OIF), is structured the same as Chapter Three. This chapter demonstrates whether the GOJ took the normative principles of Just War Theory into consideration when deciding to participate in OIF. The Koizumi administration's declared purpose was to provide logistical support to the US military; therefore, their reasons for invading Iraq was introduced in the first section of this chapter. By the time Saddam Hussein's administration collapsed, the Koizumi

administration had not yet reached a decision to dispatch the JSDF to provide logistical support to the US military because the GOJ had to enact a new temporary statute; therefore, Japan did not participate directly in the invasion. The Diet then discussed whether or not to dispatch the JSDF after the invasion had concluded. These discussions continued after the US-led coalition began its reconstruction activity in Iraq and Japan's participation in reconstruction was also discussed in the Diet. Focusing on these discussions regarding both military and reconstruction activities in the Diet, this chapter will compare the elements considered by the GOJ regarding Japan's participation in OIF with the normative principles of Just War Theory .

The final case study, Chapter Five, investigates the issues related to the Japan's Legislation for Peace and Security. Pursuant to this legislation, Japan can take military actions and to participate in reconstruction activities without enacting any temporary statutes. As Japan has not yet participated in international military operations by applying this legislation, this chapter explores five hypothetical cases to clarify the GOJ's assumptions in enacting the legislation. These hypothetical cases are based on the conditions set by the GOJ and discussions in the Diet. The chapter begins by describing the intention of the second Abe administration in passing the draft of the Japan's Legislation for Peace and Security. Since this legislation was not enacted in response to existing international military operations, this chapter begins by examining the purpose of bringing the draft to the floor of the Diet. It then describes the roles of JSDF personnel under the legislation, by exploring the hypothetical cases proposed by the GOJ and Diet

members.

The final chapter of this dissertation, Chapter Six, recapitulates the findings and draws together the theory and case studies to answer the research question posed earlier, “whether Japan’s participation in international military operations is justified from the moral-philosophical perspective.” It begins by reassessing the literature reviewed in Chapter One in light of the findings of the case study chapters, before restating these findings and summarising the theoretical approach. It then proceeds to summarise Just War Theory in relation to the practical cases. In this dissertation, contemporary Just War Theory elaborates the normative principles considered throughout the discussions set out in each case study chapter. Subsequently, the implications of the findings from these examinations are presented. This chapter then proceeds to assess the contributions to two different fields of study: jurisprudence and Japanese Studies. It then discusses the implications of the research findings for the normative principles of Just War Theory, by focusing on the difficulty for Japan to consider from the moral-philosophical perspective. The final section of the Conclusion demonstrates the necessity of continuing the research on Japan’s participation in international military operations as Japan seeks to apply to practice the Legislation for Peace and Security. By introducing a case to which Japan might apply the Legislation for Peace and Security, this dissertation addresses the issues which the GOJ should consider before dispatching the JSDF to international military operations and reconstruction activities.

Chapter One. Literature Review

This chapter provides an overview of the prior literature on Japan's participation in international military operations. As touched upon in the Introduction, this dissertation adopts Just War Theory, a doctrine of military ethics that policy-makers should consider, to answer the question 'how can we evaluate Japan's decision using its policy-making procedure to participate in international military operations?'. The literature in this chapter is reviewed in light of this research objective, to demonstrate that the existing literature does not satisfactorily answer the research question raised by this dissertation.

The existing literature on Japan's participation in international military operations can be divided into two types according to the approach used: the legal approach and the political, specifically International Relations (hereafter, IR), approach. This categorisation is useful because these are the two separate factors for Japan to consider in deciding to dispatch the Japanese Self-Defence Force (hereafter, JSDF). The legal approach is brought to the forefront of discussion because Article 9 of the Constitution of Japan (hereafter, JCL) regulates the renunciation of war. Therefore, legal scholars, particularly those specialising in the JCL, disagree with Japan's decision to participate in international military operations because they believe that doing so contravenes the JCL. Political scholars on the other hand, particularly those specialising in IR, consider that the decision to dispatch the JSDF was due to the United States

(hereafter, US) -Japan Security Treaty. Therefore, this chapter examines the existing literature on Japan's participation in international military operations to ascertain how scholars in law and politics have evaluated the governmental decision from the perspective of their specialised fields of research.

1.1. Normative Approach to Participation in International Military Operations

As noted in the Introduction, some politicians, particularly those in decision-making positions, have adopted the normative principles of Just War Theory when deciding whether or not to engage in international military operations. For instance, former Canadian President Michael Ignatieff established four criteria for justifying interventions: “1) the human rights abuses at issue have to be gross, systematic, and pervasive; 2) they have to be a threat to international peace and security in the surrounding region; 3) military intervention has to stand a real chance of putting a stop to the abuses;” and 4) the region in which the infringement of human rights is undertaken must be of significant interest for cultural, strategic, and geopolitical reasons to one of the hegemonic states, and no other hegemonic nations must be against to the intervention (Ignatieff 2003, p.40). With the fourth condition, Michael Ignatieff found the intervention in Kosovo to be legitimate.

On the other hand, jurisprudence scholars have reviewed such governmental decision-making on the use of military force from a moral-philosophical perspective. For

instance, Michael Walzer and John Rawls, whose theories will be analysed in the next chapter, both evaluate the US decision to drop atomic bombs on Hiroshima and Nagasaki to conclude World War II (hereafter, WWII). Rawls contends that the decision of then US President Harry S Truman (term of office: 12 April 1945 – 20 January 1953) to drop the bombs was morally wrong because the aim was to kill Japanese civilians (Rawls 2006, pp. 99-103). Rawls' focus on this issue reflects his view that the protection of human rights is a fundamental normative principle of war. Michael Walzer, on the other hand, offers an alternative perspective: he reasons that, unlike the Nazis, Japan did not pose a threat to international peace and security and thus dropping the atomic bombs was not a proportionate way for the US to attack Japan (Walzer 2006, pp. 263-8). In summary, the US decision to drop the atomic bombs was not legitimate because these acts were inhumane and disproportionate to the threat posed by Japan.

By reviewing how the normative principles of Just War Theory have been adopted for political decision-making processes related to engagement in international military operations and to review governmental decisions to eliminate the numbers of international military conflicts, the following sections will explore how the prior literature on Japan's participation in international military operations has been developed. Compared with the existing literature that reviews the justification of international military operations with the normative principles of Just War Theory, the prior research on Japan's participation in international military operations focuses on whether governmental decisions have been constitutionally justified or reviews the governmental

behaviour from the perspective of IR theories.

1.2. Legal Approach

As is well-known in the field of Japanese Studies, innumerable discussions on Japan's participation in international military operations have been held in the Diet since the end of WWII. Related issues have also been explored by a significant number of scholars in Japanese politics and law. One of the issues commonly tackled by scholars is whether or not dispatching the JSDF to participate in international military operations is constitutional. This section will outline the two principal positions that are adopted by these scholars: absolute renunciation of war and limited renunciation of war. Proponents of the former position interpret Article 9 of the JCL as stating Japan should not participate in any kind of international military operations. Conversely, those who adopt the position of limited renunciation of war insist that, despite the constitutional prohibition on the use of force, Japan may participate in international military operations without revising the JCL.

1.2.1. Absolute Renunciation of War

The position of absolute renunciation of war (*zenmen sensō hōki*) is conceptualised based on three elements: first, all of wars, including defensive wars, may be the means of settling international disputes; therefore, it is not necessary to distinguish whether or not

they are defensive; second, the JCL was enacted after the use of nuclear weapons; therefore, the statute should be understood as what is written in the phrase; and third, it is difficult to distinguish between defensive war and aggression (unjust war). This subsection will, therefore, analyse these three elements to understand the idea of absolute renunciation of war.

The first reason adopted for the idea of absolute renunciation of war is comparison with the constitutional law of other countries. Compared to countries in Asia, Africa, and Central and South America, the JCL is the only constitution to specify both renunciation of war and no war potentials. Paragraph one of Article 9 specifies the renunciation of aggressive wars; however, paragraph two unconditionally rejects the right to belligerency. Therefore, Article 9 of the JCL specifies the renunciation of all wars including defensive wars (Hōgaku Kyōkai, 1953, pp. 221–6; Satō, 1955, p. 114; Yamauchi, 1992, p. 65). Compared with other constitutions that specify the renunciation of war, however, scholars believe that the JCL is special; however, Nishi (1998, p. 24) criticises this belief as a myth.

The second reason comprises the historical issues behind the enactment of the JCL. It is common knowledge that the JCL refers to the 1928 Kellogg-Briand Pact and the UN Charter. However, those who adopt the idea of absolute renunciation of war contend that international treaties and the JCL differ with respect to their embodiment of abstract or concrete ideas: they believe that while international treaties aim to secure a

safe and stable international order, the JCL protects the right of Japanese civilians to pursue peaceful lives. As it is difficult to establish policies to maintain stable international order, they classify international treaties as being based on abstract ideas or an idealistic view. Conversely, because it is possible for Japan to realise the policy stated in the JCL's preamble, they classify the JCL as based on concrete ideas (Tsujimura, 2013, pp. 226–7).

The last reason to support the idea of absolute renunciation of war comprises the historical difficulty in distinguishing between defensive war and aggressive war, therefore, Article 9 of the JCL renounces all wars including defensive wars (Miyazawa and Ashibe, 1978, pp. 161–5; Kiyomiya, 1979, p. 112; Higuchi, 1994, p. 155). Okudaira (2013, p.418) adds that the majority of Japanese people support this idea due to their experience of suffering during WWII, particularly in Okinawa. At this time, many people, particularly in Hiroshima and Nagasaki, suffered from the dropping of atomic bombs in 1945, while people in many cities in Japan suffered from air strikes.

For all these reasons, scholars who adopt the idea of absolute renunciation of war believe that Japan should not engage in any wars, including defensive action. This position is widely accepted by scholars specialising in the JCL (Urabe, 2008, p. 409; Okudaira, 2013, p. 409).

1.2.2. Limited Renunciation of War

The second position on Japan's security policy is the limited renunciation of war (*gentei-teki hōki*.) Those who adopt this position believe that the Japanese people do not renounce war when it is necessary as a means of self-defence and retaliation; in this view, Japan can exercise the right to self-defence if attacked by others. This subsection will further elucidate the reasons why scholars specialising in the JCL adopt the idea of limited renunciation of war.

The first reason stems from the following phrasing of Article 9: “(...) the Japanese people forever renounce war as a sovereign right of the nation and the threat or use of force as means of settling international dispute.” In this context, the definition of “war” is decisive with regard to whether or not Japan may take defensive action against others (Sasaki, 1950, pp. 194–200; Oishi, 1957, pp. 199–206).

The second reason is based on the history of the JCL, particularly the reasons for the enactment of Article 9. It is widely believed that the JCL adopted the idea of international treaties, such as the 1928 Kellogg-Briand Pact and the UN Charter, which prohibit the use of military force (Nishi, 1999, pp. 22–4). Taking the Kellogg-Briand Pact as an example, it was also well-known as the General Treaty for Renunciation of War as an Instrument of National Policy. Under Article 1 of this treaty, the signatory states are prohibited from conducting wars “for the solution of international controversies” and “as an instrument of national policy.” By contrast, defensive war is not prohibited by the treaty. As Article 1 of the Kellogg-Briand Pact specifies that engaging in defensive war

is acceptable, scholars who hold the limited renunciation of war view believe that the JCL allows Japan to use military force when threatened by others or when necessary to maintain international peace and order (Komuro, 2013, p. 313).

The third element refers to the three principles which represented by Douglas MacArthur, Supreme Commander for the Allied Power in Japan. According to the second principle, “War as a sovereign right of the nation is abolished. Japan renounces it as an instrumentality for settling its disputes and even for preserving its own security. It relies upon the higher ideas that are now stirring the world for its defense and protection. No Japanese Army, Navy, or Air Force will ever be authorized, and no rights of belligerency will ever be conferred upon any Japanese force” (General Headquarters Supreme Commander for the Allied Powers, p. 39). The characteristics of the second principles represented in MacArthur note are: “1) Japan renounces all wars, including defensive and retaliation ones; 2) Japan does not possess any war potentials; and 3) Japan denies the right of belligerency” (*ibid*).

While scholars understand that Japan has the right to engage in defensive wars despite the JCL specifying the renunciation of war, the interpretation of “war potential” differs between scholars. Paragraph two of Article 9 specifies as follows: “In order to accomplish the aim of the preceding paragraph, land, sea, and air forces, as well as other war potential, will never been maintained.” The interpretation of the words “the aim” is controversial among scholars who believe that Japan has the right to exercise (individual)

self-defence, despite the JCL specifying the renunciation of war.

A large number of scholars specialising in JCL understand “the aim” to mean “an international peace based on justice and order” (Ashibe, 1992, p. 261; Takami, 2000, p. 408). In this perspective, “war potential” means military force; on this basis, Ashibe (1992) and Takami (2000), like the majority of scholars, believe that Japan should give up all military force. Since they adopt this position, their idea can be identified as similar to absolute renunciation of war insofar as Japan does not have the right to attack aggressors. On the other hand, Nishi and Sasaki analyse the JCL differently: for them, “the aim” means “(to) renounce war as a sovereign right of the nation;” therefore, they believe that Japan may use military force against aggressors if it is attacked (Nishi, 1995).

By analysing how various scholars specialising in JCL interpret Article 9, it is possible to demonstrate that the majority of such scholars believe that Japan should not use military power against aggressors despite the JCL allowing Japan to take defensive action against others. There seems to be a difference in their interpretation of Article 9 of the JCL; however, both of them have the common understanding that Japan cannot take physical defensive action against aggressors. Thus, a significant number of JCL scholars disagree with Japan’s participation in international military operations and Japan’s military reform.

1.3. The Political Approach: the View of International Relations

While the constitutionality of Japan's participation in international military operations has been discussed by jurists both inside and outside of Japan, extensive analyses from the IR perspective have been conducted by scholars of Japanese security. This section will clarify the existing Japanese political literature on this issue. Although it is difficult to analyse the Japanese state and its people within the IR discipline (Hook *et al.*, 2012, p. 36), innumerable studies on Japanese security and politics have been developed by applying IR theories, such as realism (neo-realism), liberalism (neo-liberalism), and constructivism, to the background of governmental decisions. Therefore, this section will review the existing Japanese political literature from these three different methodological approaches.

1.3.1. Realism/ Neo-Realism

The theory of realism, the first British literary school of IR, have developed based on the idea that nation-states are the main actors in international society. Building up with individual nation-states, international society is missing the government which controls the actors: the international system is named anarchy in realism. Being anarchical causes a "security dilemma," because individual nation-states intend to develop its security policy, such as increasing military capabilities, to overcome the other nation-states (Waltz, 1979; Mogenthau, 2006).

Reviewing the case of Japan, the GOJ has been pursuing the normalisation of military power since the enactment of the JCL, a phenomenon that can be observed from the analyses conducted by the Institute for Strategic Studies. According to a report by them, Japan's defence budget has increased annually, and the 2018 budget was 2.5 percent higher than that of the previous year (Institute for Strategic Studies, 2018, p. 224). Although the GOJ aims to become a normal state with a normal military capability, Japan has been hesitant to develop its military power by, for example, possessing nuclear weapons. Due to the dilemma which Japan is in and the deterioration of international society since the end of the Cold War, the GOJ has seemingly found it necessary to strengthen its relationship with the US to pursue national interests (Shinoda, 2006, p. 77; Izumikawa, 2010, p. 151; Singh and Shelter-Jones, 2011, p. 516). From the realist perspective, this may be referred to as the conceptual idea of a "security dilemma" because Japan has felt a "fear of abandonment" since the 1970s (Tsuchiyama, 2014, p. 298). As an example of Japan's fear of abandonment, Tsuchiyama (2014, p. 296-7) raised the Kuril Islands dispute (the Northern Territories dispute): in the late 1970s, while Japan strengthened its relationship with the US under the US-Japan Security Treaty, Russia strengthened its military power, particularly in the Kuril islands. Japan is not only in dispute with Russia; however: as is well-known, it is also in dispute with China over the *Senkaku (Diaoyu)* Island and with South Korea over the Liancourt Rocks. Territorial disputes between Japan and other East Asian nations are not the only factors that cause Japan to feel a "fear of abandonment." The possibility of North Korea attacking Japan is

also an issue. The quick decision of the Koizumi administration to provide logistical support to the US military, for example, can be explained by the concern that the US would not otherwise support Japan if North Korea were to attack (Wada, 2010, pp. 422–3). Being on the horns of this “security dilemma” caused by its disputes with other East Asian nations has prompted Japan to strengthen its relationship with the US (Ota, 2006, p. 64).

While realism explains why Japan has strengthened its relationship with the US to pursue its military power, neo-realism theory explains why Japan has strengthened its relationship with the US from the perspective of the polarity of the system (Waltz, 1979). This idea is widely supported by scholars identify Japan as a “reactive state” (Calder, 1988, p. 518) which *reacts* to “external pressure (*gaiatsu*),” particularly by the US. Not all scholars agree with this interpretation; however, others explain Japan’s activity as reflecting the characteristics of Japanese diplomacy which they identify as “quiet diplomacy” or “*aikido* diplomacy” referring to the idea of Hook *et al.* (2001) (Potter and Sudo, 2003, pp. 321–2). Hook *et al.* have also identified Japanese diplomacy as “quiet diplomacy,” as reflected in its proactive consensus-building in its foreign policy (Hook *et al.*, 2012, p. 73). Although scholars specialising in Japanese security policy have different perspectives on Japan’s diploma policy, those who adopt the position that Japan is a “reactive state” have the following view: the GOJ believes that Japan has the responsibility to *react* to the US, in particular, because of the US-Japan Security Treaty; as the US military has remained in Okinawa, Japan arguably depends on the US to assure

its national security; due to its important role in Japan's security, the US has applied invisible pressure (*gaiatsu*) upon Japan; for instance, requesting logistical support from Japan in US-led international military operations. Under strong *gaiatsu* from the US, the GOJ had to dispatch the JSDF to participate in international military operations. However, the idea that the GOJ was forced to *respond* to the US's request has been criticised on the basis that, during the Koizumi administration, *gaiatsu* from the US to dispatch the JSDF was not strong (Midford, 2003, pp. 333; 337–338; Hughes, 2004, p. 431). This can be inferred from the GOJ's decision not to dispatch the JSDF to participate in the Gulf War (Soeya, 2005, p. 108). Instead of sending troops, the GOJ decided to support the US and its allies in the Gulf War by sending large sums of money to support the multinational forces. However, this financial contribution to the Gulf War was not appreciated by Kuwait and became a source of shame for Japan. As a result, the GOJ was politically determined to avoid a repetition of this situation by offering to participate in subsequent international military operations. Due to this stance of the GOJ, the US seemed to expect that Japan would participate in US-led international military operations, such as OEF and OIF, without *gaiatsu* (Sato, 2003 p. 2).

Although the realist-derived theory seemingly explains the reason for expenditure on Japan's military capabilities, the GOJ has put the brakes on Japan's military reform.

1.3.2. Liberalism/ Neo-Liberalism

While the theory of realism is based on the idea that states compete to pursue their own national interest, liberalism is based on the idea that the conflict of national interests is not always an outbreak of war. This theory is derived from the basic idea that states are the actors of realism, while individuals and social groups, which are organised to exchange common interests, are the actors of liberalism (Moravcsik, 2003, pp. 161–2). Although liberalists have found the behaviour of states to lie in such exogenous causes, they do not believe that pursuing their own interests is linked to cooperation and an international regime. In liberalism, the term “cooperation” is often referred to as the idea of “policy coordination,” defined as follows: “A set of decisions is coordinated if adjustments have been made in them, such that adverse consequences of any one decision for other decisions are to a degree and in some frequency avoided, reduced, or counterbalanced or outweighed” (Lindblom, 1965, p. 227). Referring to the idea of “policy coordination,” the theory of liberalism emphasises the necessity for cooperation as follows: “Cooperation takes place only in situations in which actors perceive that their policies are actually or potentially in conflict, not where there is harmony. Cooperation should not be viewed as the absence of conflict, but rather as a reaction to conflict or potential conflict. Without the specter of conflict, there is no need to cooperate” (Keohane, 1984, p. 54).

While liberalism explains why Japanese people in general mainly support the

non-violation of the idea of pacifism, neo-liberalism explains Japan's participations in the UN peacekeeping operations (UNPKO). Since the JCL specifies the renunciation of war; therefore, Japan should not engage in military reform. The majority of people in Japan support the idea of anti-militarism, but the GOJ has nevertheless dispatched the JSDF to participate in UNPKO activities. The reason for this political shift regarding the role of the JSDF can be explained using the theory of neo-liberalism which is based on the idea that the aim of the international regime is to pursue public goods. "Public goods" is "(...) is as valuable in explaining the forms that cooperation must take, to avoid problems of collective action, as it is in accounting for discord" (Keohane, 1984, p. 78). Keohane (1984, pp.77-8) gives as example of public goods, the International Energy Agency (IEA), the International Monetary Fund (IMF), and the General Agreement on Tariffs and Trade (GATT). The reason for identifying these international organisations is as follows: only members of the IMF, for instance, can borrow from the Fund to solve the balance-of-payment problem to avoid a negative impact on the international economy; however, non-members may obtain the benefit from the IMF by preventing a negative impact on the international society. In Japan's case, it has found the importance of assuming leadership at the regional and global levels: for example, the Association of Southeast Asian Nations (ASEAN) Regional Forum and the UN (Katzenstein and Okawara, 2001, p. 162; Hughes and Fukushima, 2004, p. 56; Cooney, 2005, p. 146). Therefore, cooperating with other organisations in financial and security issues to pursue public goods, therefore, is the key to the idea of neo-liberalism.

Focusing on the Japanese security issue, Japan's contribution to UNPKO activities can be explained by the theory of neo-liberalism (Keohane, 1984, p. 177). The dispatch of the JSDF to the UNPKO for the purpose of international cooperation (*kokusai kōken*), the key phrase used to evaluate Japan's security issue under the theory of neo-liberalism, is a big step forward. As touched upon above, Japanese legal scholars, and indeed Japanese people in general, adopt the idea of pacifism to pursue the goal of living in peace and order; however, Japan's security policy has seemingly shifted to neo-liberalism enabling the JSDF to dispatch the military to engage in UNPKO activities to pursue the goal of maintaining international peace and security (O'Hanlon, 2007).

Although the shift in Japan's security policy from anti-war pacifism to international cooperation can be explained using the theories of liberalism and neo-liberalism, the reason for participating in the US-led wars in Afghanistan and Iraq cannot be explained by either of those theories.

1.3.3. Constructivism

The last IR theory examine in this dissertation is constructivism. Unlike realism (neo-realism) and liberalism (neo-liberalism), constructivism develops the theory by paying attention to the so-called "ideational factors," which are based on the knowledge, based on the ideological and socio-cultural ideas, and the so-called "material factors," which are based on power and national interests (Wendt, 1999). Regarding the definition of

constructivism, the constructivism-derived theory can explain the reason why a state which possesses a nuclear weapon does not use it to its enemy nation which does not possess such powerful weapons: this is because a state put brake on using a nuclear weapon because it knows how terrible it would be from the lessons of WWII. With the knowledge or norms that nuclear weapons should not be used, a nation-state would not use it although it is the simple way of defeating its enemy.

In relation to Japanese security policy, Thomas Berger (1993, 1998) points out that the “culture of anti-militarism” has been deeply rooted and prevalent in Japanese society. The idea “culture of anti-militarism” is the “ideational factor” of Japanese people, as the JCL specifies the renunciation of war and the academics support the idea of absolute renunciation of war (see 1.2.1.). While the “culture of anti-militarism” lies in Japan, the GOJ expands its physical capability in its security by increasing the defensive budget (see 1.3.1.). Japan’s goal would not become a normal independent state, as realists analyse: it is making the peoples in Japan’s neighbour countries, such as China, South Korea, North Korea, and Russia, feel relief by proposing that Japan’s position of the “culture of anti-militarism,” which is not widely accepted among normal states (Kimijima, 2003, p. 17), at the same time, making the peoples in Japan feel the same by expanding its physical military capabilities (O’Hanlon, 2007, p.100)

By combining the “ideational factors” and the “material factors,” constructivists review Japan’s behaviour on keeping the idea of “culture of anti-

militarism” and expanding its military capability.

1.4. Conclusion

By reviewing the previous literature on Japanese security, it can be concluded that legal scholars have concentrated on the constitutionality of Japan’s participation in international military operations, while IR scholars have focused on how Japan’s diplomatic strategies can be analysed using IR theories. To conclude this chapter, this section will address the issues which scholars in each field of study should have considered.

The arguments of legal scholars on Japan’s participation in international military operations regard whether or not the government’s decision is constitutional. Since the constitution is a basic norm of the country, Japan should follow its specifications. The idea of pacifism is one of the fundamental principles specified in the JCL; therefore, many JCL scholars believe it necessary to strictly follow Article 9 of the JCL. However, other scholars adopts a different interpretation of “the limited renunciation of war,” and see the constitution as a guideline for the state that may be interpreted differently based on the situation that Japan is currently facing. Although legal scholars have developed innumerable arguments on Japan’s participation in international military operations, this dissertation focuses on the lack of consideration of the reasons for Japan’s participation in international military operations. Since international military operations occur outside

of Japan, Japan should also consider whether participation in such operations violates public international law on war rather than whether it violates Japanese domestic law.

While legal scholars have developed their discussion of Japanese security by focusing on whether Japan's decisions violate the JCL, political scholars have analysed why the GOJ reacts in specific ways to incidents using IR theories, such as realism (neo-realism), liberalism (neo-liberalism), and constructivism. Referring to the theory of realism, political scholars have focused on why the GOJ strengthens its relationship with the US: "fear of abandonment" and "security dilemma." The liberalism-derived theory, on the other hand, explains why Japan participates in international military operations, particularly international reconstruction activities. Constructivism develops by combining with the knowledge based on the ideological, socio-cultural approach and the material factors, such as power and interest, so as to interact with others to reconstruct international society intersubjectivity. Although IR theories explain why the GOJ made such decisions on Japan's security, such theories have not been used to evaluate whether the governmental diplomatic strategy is justified with a moral-philosophical standpoint.

Due to the lack of consideration of Japan's participation in international military operations, this dissertation seeks to examine whether the GOJ took the normative principles of Just War Theory into consideration when deciding to participate in international military operations and reviews whether Japan's participation is justified from the moral-philosophical perspective. As touched upon in the Introduction, some

politicians, particularly those in Western countries, have adopted the normative principles of Just War Theory when deciding to participate in international military operations. Moreover, jurisprudence scholars have also reviewed governmental decisions to conduct international military operations using the normative principles of Just War Theory. Therefore, this dissertation adopts the normative principles of Just War Theory, first developed in the Ancient Rome, to answer the research questions proposed: whether or not the GOJ took the normative principles of Just War Theory into consideration when deciding to participate in international military operations. The next chapter, which describes the methodology, will introduce the reasons why the normative principles of Just War Theory may be used to answer the research questions. It will then elaborate the normative principles of Just War Theory because multiple theories have been developed by jurists and philosophers since the Ancient Rome.

Chapter Two. Theoretical Approach

As seen in the previous chapter, a huge volume of research has focused on Japan's participation in international military operations from the legal and political, particularly the IR, perspectives. However, previous researchers have not evaluated Japan's commitment to international military operations from the moral-philosophical perspective, although jurisprudence scholars have examined whether or not the US's and the UK's decision on engaging in international military operations, such as the Afghanistan War and Iraqi War, are justified from the moral-philosophical perspective. Thus, this dissertation aims to examine whether the GOJ has considered the moral-philosophical elements that all states should take into consideration when deciding upon participation in international military operations. To this end, this chapter explains what the moral-philosophical elements are; the criteria are necessary for all states to consider before/during/after international military operations. The moral-philosophical elements are established in tandem with an exploration of the Just War Theory, which has its origins in Ancient Rome. The first section explores how Just War Theory has influenced to international law on war. Based on this foundation, it is clarified that applying moral-philosophical criteria is a suitable method to answer the research question: whether or not the GOJ took the normative principles of Just War Theory into consideration when deciding to participate in international military operations. This chapter then proceeds to explain Just War Theory. While traditional Just War Theory was developed based on two categories, *jus ad bellum* (the law to war) and *jus in bello* (the law of war), contemporary

Just War Theory has added *jus post bellum* (the law after war) as a third category. As this dissertation deals with the current international situation with respect to war, the moral-philosophical criteria will be developed under these three terms. To further clarify Just War Theory, this dissertation uses two principles applied in public international law on war to judge whether war is legally justified: the principles of necessity and proportionality (Jennings, 1938; Gray, 2008, pp. 148–56; Greenwood, 2015, paras 25–9). Therefore, this chapter develops the moral-philosophical criteria by applying these two principles to each term (*jus ad bellum*, *jus in bello*, and *jus post bellum*).

2.1. Classical Just War Theory

As mentioned above, this section demonstrates how Just War Theory has influenced the current international law on wars. Since its inception by Cicero, many philosophers have developed Just War Theory over the centuries. This section analyses the traditional ideas on just war to clarify the general features thereof. Above all, this section focuses on the ideas developed by Cicero, St. Augustine, St. Thomas Aquinas, Francisco de Vitoria, Francisco Suarez, and Hugo Grotius. Through the works of these six authors, we will define the traditional form of Just War Theory and its influence on the current international law on war.

Cicero (106-43 BC) was amongst the most famous of Roman philosophers and statesmen and is well-known as the founder of Just War Theory. His book *De Officiis*,

published in 44 BC, explains how to live, how to act, and how to fulfil duties. Here, “duties” means those things that all people must undertake to achieve and maintain well-being. In this context, he clarifies under what conditions one may use force against others’ guilt of wrong-doing. Cicero, however, does not believe that all kinds of military force are justifiable: “there is a limit to retribution” (XI Cicero, 45AD bk. I; May, Rovie and Viner, 2006, pp. 5–7). “The aggressor”, states Cicero, “should be brought to repent of his wrong-doing, in order that he may not repeat the offence and that others may be deterred from doing wrong” (*ibid*). Qualifying his idea that self-defence permits the use of force against wrong-doers, Cicero clarifies three principles to follow in responding to wrong-doings; first, the wrong-doing should be discussed with the wrong-doers before using military force; second, we should ensure to mercifully protect those who are unarmed; and third, we should avoid unnecessary harm against wrong-doers (*ibid*). Cicero suggests that by following these three principles, we may live in peace and unharmed, which he describes as the best way to live.

In the contemporary context, Cicero’s idea can be compared with those on self-defence in the UN Charter: Charter VII specifies that the use of force is the last resort that should be used to settle disputes. Cicero’s Just War Theory, therefore, seems to describe the legitimate conditions under which all states are permitted to use force against an enemy; in contemporary terms, this legitimate use of force is identified as individual self-defence, following Cicero’s original idea.

After Cicero, St. Augustine (354-430 AD) developed his idea of Just War Theory in his book *Civitas Dei* published in 420. This book focuses on five doctrines that he believes all Christians should follow: the misery of righteousness, the existence of evils, the struggles between the determination of people (violation), the intelligence of God (omniscience), and original sin. In explaining the elements that all Christians must follow, St. Augustine lists two exceptional cases in which people must kill others: first, when homicide is commanded by the government, i.e., jurists and the most reasonable source of power; and second, when it is ordered by God (21 Augustine, 420AD bk.I. Ch. 22; May, Rovie and Viner, 2006, p. 15). In the former case, St. Augustine imagines the execution of the death penalty. For him, it is simple to determine the legitimacy of the death penalty in each specific case, by verifying that the conditions for imposing that sentence have been satisfied. However, the latter case, the obedience to the God's will, is not simple because there are no written necessary conditions to justify homicide in this case. *Civitas Dei*, therefore, refers to two rules that all Christians must follow to comply with God's orders; first, do not harm others; and second, give support to everyone you possibly can (14 Augustine, 420AD bk. XIX; May, Rovie and Viner, 2006, pp. 15–20). Overall, these two rules reflect his idea of just war.

Unlike Cicero, St. Augustine pays no attention to the righteousness of war; however, he does emphasise the importance of minimising harm. For St. Augustine, it is difficult to define the righteousness of peace; while everyone seeks peace, each might have a different perspective on its meaning. Nevertheless, he believes that the first rule,

do not harm others, is a common understanding of peace. Therefore, his idea is encapsulated as, “there is no man who does not wish for peace” (May, Rovie and Viner, 2006, pp. 16–17) . Since people have different backgrounds, such as language or religion, they may have different values regarding peace; however, he believes that people’s response to the question of whether waging war is legitimate is the same for all. Therefore, he sets the first condition, not to violate others, because he believes that this rule reflects the words of the Apostle Paul: “anyone who does not take care of his own people, especially those in his own household, is worse than an unbeliever” (14 Augustine, 420AD bk. XIX; May, Rovie and Viner, 2006, pp. 15–20).

The next prominent figure to develop Just War Theory was St. Thomas Aquinas (1224-1274), in his book *Summa Theologicae* published in 1265. This book outlines the Christian theologies, such as Theology Proper (the existence of God), the Creation, Theological Anthropology (human being), Hamartiology (the purpose of human existence), Christology (the existence of Christ), the Sacraments, and Soteriology (the callings to Heaven). His idea of Just War Theory can be roughly divided into three elements: the law of God, natural law theory, and human law, and is located in the second idea. St. Thomas Aquinas thereby establishes his theory based on natural law theory with these seven Christian theologies from the legal more than the moral perspective. He refers extensively to the ideas of St. Augustine in examining the conditions under which it is legitimate for people to use military force against others. In *Summa Theologicae*, he clarifies that there are three conditions that must be satisfied for a war to be justified: the

authority of sovereign states, a just cause to engage in war, and the right intention to conduct a war, such as the elimination of wrong-doers (Thoma, 1265 para. 28656 q. 11 a. 1 ad. 1-3; May, Rovie and Viner, 2006, pp. 27–28). St. Thomas Aquinas specifies that killing people who engage in wrong-doing is justified because he identifies them as beasts: as he deems it lawful for us to kill beasts, he also believes we may kill wrong-doers. Killing wrong-doers, he says, will be for the wealth of the whole community (q. 11 Thoma, 1265 para. 28654; May, Rovie and Viner, 2006, pp. 27–28). Regarding the killing of innocent people, he contends that this can only be justified when it is God's will. By way of explanation, St. Thomas Aquinas uses the story of Abraham as an example. He asserts that Abraham's decision to sacrifice his son was justified because it was commanded by God's will. Although he accepts that killing innocents is justified when ordered by God, he considers it otherwise unlawful to kill innocents, since this act does not bring us any happiness. In sum, St. Thomas Aquinas accepts the legitimacy of killing innocents in obedience to God's will. However, he criticises the killing of innocents without God's will because doing so means destroying the world that God has created.

St. Thomas Aquinas also mentions self-defence as a situation in which it is lawful to kill others. He specifies two conditions that must be satisfied to justify the use of force: first, it is necessary in order to save one's life; and second, it is necessary in order to destroy the homicide of the aggressors (Thoma, 1265 v. 7; May, Rovie and Viner, 2006, pp. 31–33). These conditions are based on the idea that we should preserve as it is the world that God has created for us. He believes that the use of force to protect others

might contravene God's will. Therefore, he does not fully accept self-defence as a lawful justification for using force against aggressors or wrong-doers. He also emphasises the necessity of considering the degree of force used against wrong-doers as people should avoid killing others in order to be saved from God. Therefore, people must consider these three elements to justify acts in self-defence.

Francisco de Vitoria (1483-1546), a Spanish Renaissance Roman Catholic philosopher, theologian, and jurist, expands his Just War Theory based on the conflict between Christians and non-Christians. His idea on Just War Theory is specified in his book *De Jure Belli* published in 1532, and his lecture *De Indis* delivered in the same year. He believes it necessary to regulate through laws, one of which is Just War Theory, to maintain public goods (Vitoria, 1532 sec. 14; May, Rovie and Viner, 2006, p. 40). Therefore, he asserts that it is necessary to follow Just War Theory for the sake of common (or public) goods, referring to peace and security. On that basis, de Vitoria believes it is lawful to wage war to maintain peace and security: self-defence is the only case in which physical power may be used against wrong-doing. He also specifies, in *De Jure Belli*, how much physical power should be used against wrong-doing: according to his book, it is legitimate to kill wrong-doers because such homicide may help to recover the common good of peace (Vitoria, 1532 sec. 15; May, Rovie and Viner, 2006, p. 40). In this sense, de Vitoria regards the death penalty as a legitimate means to maintain peace and security. He also insists that killing innocent people may be inevitable in a necessary attack to eliminate the guilty or wrong-doers (Vitoria, 1532 sec. 35; May, Rovie and Viner, 2006,

pp. 40–41).

Francisco Suarez (1548-1617), a Spanish Jesuit priest and philosopher who taught in Rome and Salamanca, published his book *De virtute et statu religionis* in 1608-09. He develops his Just War Theory from the scholastic perspective, dividing the theory into three elements: *jus ad bellum*, *jus in bello*, and *jus post bellum*. His idea of *jus ad bellum* comprises six components related to the fundamental elements of Just War Theory: moral permission to engage in war; the difference between defensive and offensive war; moral justification to declare war; the requirements to defend others; theological constraints to avoid war; and the moral effects of waging war. He then proceeds to deal with six components of *jus in bello*: the classification of innocent people and their exemptions; the “doctrine of double effects,” namely military action with unintended consequences and that with intended consequences; the relationship between defensive rights and incidental damage; the possibility for an alliance to participate in war; the characteristics of civil war; and the justification for deceiving the enemy (May, Rovie and Viner, 2006, pp. 59–62). Suarez gives two examples to develop his idea of *jus in bello*: participating in highly risky missions in South America and committing a suicide attack within a civil war (May, Rovie and Viner, 2006, pp. 62–63). Finally, Suarez identifies three elements of *jus post bellum*: justification of victory; the right to conclude a peace treaty; and the right for the victor to acquire property in the defeated enemy’s territory (May, Rovie and Viner, 2006, p. 64). Considering all three factors related to Just War Theory, *jus ad bellum*, *jus in bello*, and *jus post bellum*, Suarez concludes that a just

cause is not a necessary component for his Just War Theory, because he believes that the other elements of *jus ad bellum*, *jus in bello*, and *jus post bellum* are more important. He seems to see justice only in the context of a war situation. Therefore, he believes it necessary to satisfy the elements of all three factors of Just War Theory in order to justify war.

Hugo Grotius (1583-1645), one of the best-known lawyers of the seventeenth century and a specialist in public international law, published his book *De jure belli ac pacis* in 1625. This book details his idea of Just War Theory, in which he attempts to combine theology and jurisprudence to examine what conditions should be fulfilled for states to wage war. He attempts to ground his Just War Theory not only in law and morality but also in the concept of rights, a newly developed idea of jurisprudence in the Enlightenment. This is explained in his book as follows: “where juridical settlement fails, war begins” (Grotius, 1631 bk. II Ch. I, sec. II, para. II; May, Rovie and Viner, 2006, pp. 66–68). He specifies self-defence as a justifiable use of force, believing that states have the right to protect their territory and people from enemies. Grotius then considers the conditions for determining the legitimacy of war. He asserts that there is only one situation in which a state can legitimately wage war: when attacked by an enemy (Grotius, 1631 bk. II. Ch. I. Sec. I para. 4; May, Rovie and Viner, 2006, p. 70). This is the requirement for *jus ad bellum*. With regard to *jus in bello*, Grotius identifies three conditions: when a war will end; how to carry out a military operation; and how to treat soldiers (*ibid*). Although his conditions for *jus in bello* lack clarity, he explains the

necessity for a state to engage in war in terms of rights.

By analysing six prominent authors involved in the development of classical Just War Theory, we have identified many different elements of the theory as posited by philosophers and jurists since Ancient Rome. We have also observed that, in developing Just War Theory, some philosophers and jurists, namely St. Thomas Aquinas, de Vitoria, Suarez, and Grotius, have combined theory and jurisprudence. They apply theology to the situation of just war to explain why rules must be observed in using military force against wrong-doing. As regards necessity, they unanimously consider self-defence a justifiable reason for using force against others. In sum, this analysis of classical Just War Theory has clarified the necessity to combine theology and practice to develop Just War Theory.

2.2. Just War Theory as a Methodology

This section describes the elements required to justify the use of force against wrong-doing. Since there is limited research applying Just War Theory to contemporary cases of international military operations, this dissertation seeks to extend and adapt existing research on just war.

To apply Just War Theory to contemporary cases of international military operations, this section will separately consider each of the three categories of Just War

Theory: *jus ad bellum*, *jus in bello*, and *jus post bellum*. The first category, *jus ad bellum*, establishes certain criteria to determine whether a war is justified. The second category, *jus in bello*, examines whether the way in which war is conducted is justifiable. Finally, the third category, *jus post bellum*, examines whether the victors of war fairly treat the defeated opponents.

Based on these three categories of Just War Theory, this dissertation will adopt two principles applied by public international law on war to elaborate the legitimacy of war: the principle of necessity and the principle of proportionality. Although neither principle is specified in contemporary regulations on war, such as the UN Charter, the Rome Statute of the International Court, or the Geneva Convention, both principles have been commonly recognised in customary international law (Gray, 2008, pp. 203–207). These two principles were first applied to the case of the Caroline affair in 1837 (Jennings, 1938). US Senator Daniel Webster (1841-1843) explained the foundational criteria of these two principles as follows: the “necessary of that self-defense is instant, overwhelming, and leaving no choice of means, and no moment for deliberation” (Webster, 1842). The Webster’s doctrine has been widely accepted as the *locus classicus* for self-defence. For example, it was applied by the International Court of Justice to examine whether the US actions in Nicaragua constituted legitimate self-defence (Merits, 1986). Thus, Webster’s doctrine can be considered an accepted tenet of public international law on war. While it has been widely applied to solving practical issues on self-defence, Walzer suggests that the Webster’s doctrine also sustains moral-

philosophical considerations as an appeal to war (Walzer, 2006, pp. 74–75).

By combining the two applicable principles of public international law on war (the principles of necessity and proportionality) with the three categories of Just War Theory (*jus ad bellum*, *jus in bello*, and *jus post bellum*), there are six composite components to explore in relation to the contemporary situation of international military operations.

2.2.1. *Jus ad Bellum*

The idea of *jus ad bellum* has been widely developed by many modern jurists and philosophers, such as Michael Walzer, John Rawls, and Larry May. Their ideas of *jus ad bellum* comprise five factors for consideration, which seem to have been taken from classical Just War Theory: just cause; right intention; proper authority; last resort; and proportionality. This section will explain the required considerations for *jus ad bellum*. By analysing modern Just War Theory, its application to the contemporary situation of international military operations will be elaborated.

2.2.1.i. The Principle of Necessity

The principle of necessity considers why military force needs to be deployed to a just cause and the right intention. These two ideas represent the principle of necessity in this dissertation. Therefore, this section will examine how modern philosophers and jurists

interpret just cause and right intention in their ideas of Just War Theory. To describe this principle, two cases will be separately considered: individual self-defence and collective self-defence.

Beginning with individual self-defence, this should first be examined from the legal perspective. The legal justification for resorting to war is specified in the UN Charter, while illegal use of force is identified in the UN Charter, the Rome Statute of the International Court, and the Geneva Convention. According to Article 51 of the UN Charter, defensive action to resist an external attack is legally justified; since attack violates sovereignty, force may be used to protect territorial integrity and innocent citizens. Thus, in legal terms, the state can exercise the right to individual self-defence if subjected to an armed attack.

With regard to collective self-defence, this involves third parties, used in this dissertation to mean sovereign states (sometimes in alliance) that are not participants in the original conflict but become involved to maintain international peace and security. Given our primary focus on current international military operations, collective self-defence is more relevant than individual self-defence. The legal justification for exercising the right to collective self-defence is also specified in Article 51 of the UN Charter; therefore, the same approach applied in justifying the exercise of the right to individual self-defence would be taken with respect to the legal examination. However, the justifications for exercising the two distinct rights appear to be distinguished by

moral-philosophical perspective; therefore, this subsection will analyse how moral-philosophers view the exercising of the rights to individual self-defence and collective self-defence.

a) Michael Walzer

Michael Walzer (b. 1935), a well-known American political theorist, published his book *Just and Unjust Wars: A Moral Argument with Historical Illustrations* in 1977. He explains his idea of just war by referring to classical works on the theory, such as those of Francisco de Vitoria and Hugo Grotius. To develop his idea of Just War Theory, Walzer examines under what conditions a state can wage a war. He commences his examination by formulating a state as an entity “for the sake of life and liberty” (Walzer, 2006, p. 61). Defining aggression against a state as the violation of “life and liberty,” Walzer criticises such action on two grounds. The first criticism is that acts of aggression force a state’s civilians, the victims of attack, to fight for their lives and liberty against their will (Walzer, 2006, pp. 51–52). As the second criticism, Walzer continues that acts of aggression violate “rights to which we attach enormous importance (...) that are worth dying for”, as the second criticism (Walzer, 2006, p. 53). With these two reasons, Walzer believes that a state can wage war to protect its political rights. Brian Orend summarises Walzer’s view as follows: the government is obliged to “shape its domestic policies within its own borders, free of foreign coercion or control” (Orend, 2000, p. 89).

Walzer also insists on the necessity for allied states to take defensive action, defined as collective self-defence. Referring to alliance, Walzer reasons that because an aggressor may violate the alliance of a state with others, the alliance has the right to use military power against the aggressors (Walzer, 2006, p. 53). This is because protecting an alliance or political community is related to the “life and liberty” of individual states. Therefore, Walzer contends that an alliance has the right to exercise collective self-defence, if the “life and liberty” of a state can, thereby, be maintained.

In concluding, in his idea of Just War Theory, Walzer stipulates three conditions that must be satisfied for a state to use force against others: first, the aggressor must demonstrate a clear intention to violate the state; second, the aggressor must have prepared sufficiently to carry out its plan to violate the state; and third, exercising military force against the aggressor must be the only way for the state to resolve the situation (Walzer, 2006, pp. 80–81). When all three conditions are satisfied, Walzer asserts that the state or its allied countries has the right to exercise self-defence against an aggressor. For Walzer, these three conditions collectively form the principle of necessity in *jus ad bellum*.

b) John Rawls

John Rawls (1921-2002), an American moral and political philosopher, deals with Just War Theory in his book *The Law of People: with “the Idea of Public Reason Revisited,”* the first version of which was published in 1999. His idea of Just War Theory is developed

by attempting to apply a liberal idea of justice to “the Law of Peoples.” Before developing his idea of Just War Theory, Rawls specifies what he means by “the Law of Peoples.” He gives eight principles, based upon a liberal idea of justice: people should respect the freedom and independence of other peoples; people should observe treaties; people should treat others equally; peoples should not interfere with others; people have the right to exercise self-defence; people should pay attention to human rights; people should follow the rules of conducting war; and people should help others if their human rights are violated (Rawls, 2006, p. 37). In these eight principles of “the Law of Peoples,” Rawls focuses particularly on protecting human rights.

Based on his description of “the Law of Peoples,” Rawls divides people into two categories: those who obey “the Law of Peoples” and those who do not. He names the first category “well-ordered peoples,” comprising “reasonable liberal peoples,” who follow “the Law of Peoples” without any hesitation in their relationship, and “decent peoples,” who accept and follow “the Law of Peoples.” Rawls’ second category is “not well-ordered peoples,” which comprises three types: first, “outlaw states,” whose people refuse to obey “the Law of Peoples”; second, “the societies burdened by unfavorable conditions”; and third, those characterised by “benevolent absolutism,” who deny “the Law of Peoples” in making political decisions (Rawls, 2006, p. 4).

According to his categorisation of peoples, aggressors, those people who initiate territorial disputes and violate human rights, are defined as “not well-ordered

peoples” in the subcategory of “outlaw states,” because they ignore the principles of “the Law of Peoples.” As Rawls believes that “well-ordered peoples” do not use military force against others without justification, he considers the case in which “well-ordered peoples” would have the right to wage war (*jus ad bellum*). According to his idea of the principle of necessity in *jus ad bellum*, “well-ordered peoples” have the right to wage war when it is necessary to defend their human rights from aggressors or “outlaw states.”

As well as justifying military action in pursuit of individual self-defence, Rawls also argues that exercising the right to collective self-defence is moral-philosophically justified: “peoples have a duty to assist other peoples living under unfavorable conditions that prevent their having a just or decent political and social regime” (Rawls, 2006, p. 37). Overall, Rawls considers that it is justifiable to exercise the right to collective self-defence to protect human rights. This purpose derives from one of the principles of “the Law of Peoples,” pursuant to which a threatened state’s alliance has the right to exercise collective self-defence.

Rawls develops his idea of Just War Theory on the basis that a state obeying “the Law of Peoples” has the right to exercise self-defence. He stipulates only one situation in which war can be justified: when the people of “outlaw states” violate the human rights of others (Rawls, 2006, p. 90). According to *The Law of Peoples: with “the Idea of Public Reason Revisited,”* Rawls insists that it is incumbent on “well-ordered peoples” to make other peoples who do not obey “the Law of Peoples” follow said law

(Rawls, 2006, pp. 36–37). Thus, Rawls limits the use of military force by “well-ordered peoples” to situations in which an aggressor violates their human rights.

c) Larry May

Larry May is an American political philosopher specialising in international criminal law. In his book *War Crimes and Just War*, published in 2007, he considers the principle of necessity in *jus ad bellum*. As his theory of just war is based on public international law on war, including customary international law, he only accepts self-defence as a justification for war. Although he bases his Just War Theory on public international law on war, he specifies the difficulty of applying Article 1 of the Annex to the Hague Convention to contemporary cases. Because the soldiers of contemporary international armed attacks do not wear uniforms and do not carry weapons openly, it is difficult to distinguish between combatants and non-combatants (May, 2007, pp. 93–103) . Recognising the difficulty of identifying whom to attack, May clarifies four conditions that must be satisfied to justify the use of force against others: first, the prevention of significant harm; second, this harm must be an imminent threat; third, there must be no other way to prevent this harm; and fourth, the harm inflicted by the defensive action must not exceed the harm that would otherwise have been caused (May, 2007, p. 292). May asserts that all four conditions must be satisfied to justify defensive military action.

Compared with Walzer and Rawls, May does not distinguish the cases of

collective and individual self-defence: instead, he considers his four conditions equally applicable to both forms of self-defence. May emphasises the importance of international society treating people with humaneness and mercy (May, 2007, pp. 104–118). In this regard, he believes that only the fulfilment of all four conditions can justify the use of force against others.

d) Summary

None of these three authors' Just War Theory seems to facilitate applying the Annex of the Hague Convention to conflict today. Therefore, moral-philosophical criteria are needed to provide guidelines on minimising the damage or harm caused by defensive actions. To minimise the violation of human rights, there are two factors to consider in determining whether defensive actions are justified: first, whether resorting to war is the only option; and second, how combatants and non-combatants are distinguished. The first element was considered by all three authors in developing their own Just War Theory, while the second element is particularly relevant to the current situation in international society. Accurately distinguishing between non-combatants and combatants should reduce the number of people whose human rights are violated without justification. The goal of protecting human rights in general reflects a liberal perspective of justice, as advocated by Rawls. Therefore, a state should select its attack targets carefully to minimise the innocent victims of defensive actions.

2.2.1.ii. The Principle of Proportionality

While the principle of necessity guides decision-makers on whether a situation requires military action, the principle of proportionality helps them to decide how much military power they can legitimately use for defensive actions. Even where a state satisfies the principle of necessity in *jus ad bellum*, a state or its allied countries cannot use excessive power against an aggressor because it may comprise paranoid aggression (Crawford, 2015, p. 34). The theories of the three just war jurists and philosophers, Michael Walzer, John Rawls, and Larry May, will be further analysed in this section to clarify how much military power can legitimately be used for defensive action. With their description of the principle of proportionality, this section will extend Just War Theory to apply it to contemporary international military operations.

a) Michael Walzer

In *Just and Unjust Wars: A Moral Argument with Historical Illustrations*, Walzer uses the word “vulnerable,” instead of “proportional” in relation to *jus ad bellum*. He suggests that vulnerability is one of the elements which politicians must consider before deciding to wage war. Adopting the words of David Hume, “the object in war is a better state of peace” (Hume, 1951, pp. 190–191), Walzer develops his idea on why vulnerability is essential in *jus ad bellum* (Walzer, 2006, p. 121). As explored above, Walzer believes that the violation of civilians’ “life and liberty” is a just cause for waging war. However, even

where violation by an aggressor exists, Walzer argues that politicians should not decide to wage war without considering the circumstances and political consequences of so doing: in particular, politicians should consider the idea of vulnerability. As Walzer emphasises, “war kills; that is all it does;” thus, a war may kill the civilians whose “life and liberty” should be protected by the state (Walzer, 2006, p. 109). Walzer, therefore, requires that politicians or other decision-makers decide which is safer: waging war or taking moderate action against the aggressor (*status quo*). This reflects Walzer’s meaning of vulnerability in this context: “states must evaluate and compare their vulnerability in a war situation and in maintaining the *status quo*.” If civilians’ “life and liberty” become less vulnerable by waging war than through the *status quo*, Walzer believes that waging war becomes justifiable. On the other hand, deciding to wage war that may increase the number of victims is not justifiable, even when there is a just cause for a state to wage war. This is Walzer’s boundary line for distinguishing between justifiable and unjustifiable defensive war.

b) John Rawls

Rawls only briefly elaborates his idea of the principle of proportionality in *jus ad bellum*. His approach to *jus ad bellum* is based on the belief that well-ordered people should obey the idea of “the Law of Peoples;” he also accepts that well-ordered people have the right to use military action against those who violate their human rights. Although Rawls thus accepts that “well-ordered peoples” have the right to exercise self-defence, he describes

self-defence as follows: “their [liberal and decent peoples’] defense is (...) only their first and most urgent task” (Rawls, 2006, pp. 92–93). Rawls, therefore, suggests that self-defence should be the last resort. This is Rawls’ only allusion to the principle of proportionality. His idea that self-defence should be the last resort is evident in another part of *The Law of Peoples: with “the Idea of Public Reason Revisited,”* in which he emphasises the importance of diplomacy (Rawls, 2006, pp. 92–93). Thus, Rawls’ idea of *jus ad bellum* is that “well-ordered peoples” may exercise the right to self-defence if and when their negotiation with the peoples of “outlaw states” fails.

c) Larry May

May articulates that when deciding whether or not to exercise the right to self-defence, a state’s politicians must consider how to minimise the violation of human rights. To explain why this is important, he adopts the humanity point of view, based on the theories of Hugo Grotius and Thomas Hobbs (May, 2007, pp. 57–8). As May advocates respect for human rights in general, he emphasises that every individual should be treated humanely, including prisoners of war, according to the principle of proportionality in *jus ad bellum* (May, 2007, pp. 59–60). As the theory of Grotius has already been examined in 2.1, this section will only consider May’s recent study of the principle of proportionality, sometimes termed the humanity principle, as one of the normative principles in this dissertation.

May explains the importance of considering the principle of proportionality as follows: “[the principle of proportionality is] a restraint on the principle of military necessity” (May, 2007, p. 218). May proceeds to emphasise that if a state is only takes the principle of proportionality into consideration by exercising the right to self-defence, it could be regarded “as a complete defense against the use of otherwise inhumane tactics” (May, 2007, p. 219). Taking the example of the Bush administration’s decision to invade Afghanistan in 2001, May asserts that they did not consider the principle of proportionality, because the attack did not treat all people humanely. The principle of proportionality is evidently intended to temper military necessity; thus, considering this principle potentially reduces the numbers of innocent victims. Overall, May believes that the principle of proportionality is the most important factor in *jus ad bellum*. Nevertheless, international humanitarian law pays less attention to this principle (May, 2007, p. 219).

d) Summary

From the works of these three authors, we can conclude that a state should consider the protection of human rights when deciding whether or not to wage war. Although, as May observes, international humanitarian law does not adequately consider this issue, this consideration is a missing-link to other authors, such as Walzer and Rawls. If a state’s politicians or decision-makers do not adequately consider the protection of human rights before waging war, the aggressors might retaliate against the defensive action. To prevent a chain of retaliation, a state should minimise the degree of force used in self-defence.

Therefore, it is important for a state to consider the principle of proportionality to justify its defensive action against aggressors.

2.2.2. *Jus in Bello*

Like *jus ad bellum*, the concept of *jus in bello* has been widely developed by many jurists and philosophers. Their ideas of *jus in bello* comprise two elements: first, a state's politicians or decision-makers should observe the rules of war, such as the declaration of war; second, all soldiers should obey the rules of war, such as the prohibition on using weapons from which the victims would suffer. These two elements are taken from classical Just War Theory. This section will explain what kind of considerations in *jus in bello* are required to justify a war. To clearly illustrate the factors for consideration, the two principles used in the previous section, necessity and proportionality, will be used once more. By analysing modern Just War Theory, the theory's application to contemporary international military operations will be elaborated.

2.2.2.i. The Principle of Necessity

It is widely believed that international humanitarian law, such as the Geneva Conventions, aims to protect human dignity (May, 2007, p. 9). Therefore, the principle of necessity in *jus in bello* specifies what actions are legitimate for combatants. Based on international humanitarian law, modern just war jurists and philosophers identify two key elements:

the first is the necessity to distinguish between combatants to be attacked and non-combatants to be rescued; and the second is the importance of considering under what conditions a state's soldiers may use military force. We will, therefore, analyse how modern jurists and philosophers have developed their respective ideas on these two issues.

This section will first consider how the issue of identifying combatants has been approached in the field of public international law. According to Article 1 of the Annex to the Hague Convention, four criteria can be used to define belligerents: responsibility for commanding operations or supervising soldiers; wearing uniforms bearing a symbol that shows membership of militant groups; carrying weapons openly; and conducting operations according to the laws and customs of war. The use of force by a state's soldier is legitimate against any individual satisfying one or more of these four criteria because they are categorised as belligerents. Conversely, even persons meeting none of these four criteria should, from a legal perspective, be protected.

The four criteria can thus be seen as the basic elements in examining *jus in bello*. However, for the modern jurists and philosophers who have considered Just War Theory in relation to the current situation in international society, particularly Larry May, these four criteria are old-fashioned: the combatants of international militant groups, such as al-Qaeda and Islamic State of Iraq and Syria (ISIS,) neither wear uniforms nor carry weapons openly. Thus, in the complex situation facing international society today, moral-philosophical perspectives can offer certain guidelines for a state's soldiers to judge

whether people on the battlefield are identified as belligerents.

(a) Michael Walzer

In developing his idea of the principle of necessity in *jus in bello*, Walzer believes that those who fulfil the four criteria in Article 1 intend to kill their enemy by referring to the Annex of the Hague Convention (Walzer, 2006, p. 136). Walzer describes two specific situations in which people on the battlefield should be considered belligerents: the first situation is when soldiers are forced to fight; and the second situation is when soldiers are neither wearing uniforms with a symbol of militant affiliation, nor carrying weapons openly. This section will analyse the reason why Walzer defines people in these situations as belligerents.

First, why does Walzer believe that soldiers forced to fight should be identified as combatants? Walzer's classification justifies treating military conscripts in the same way as commanders and willing soldiers, both professional and volunteers. Although he understands that military conscripts are forced to fight, he recognises them as combatants because they technically choose to accept their conscriptions. Walzer believes such individuals face a dilemma between two risks: of their human rights being violated by disobeying conscription orders and of killing their enemies by following commanders' orders (Walzer, 2006, p. 306). Therefore, he contends that those who decide to serve as military conscripts, despite their option to refuse, should be categorised as legitimate

targets of military force.

Second, Walzer describes soldiers who seem to lack intent to kill or harm their enemies. Walzer considers five practical situations in which soldiers might lack the intention to harm or kill: when a soldier is escaping from the battle zone with his head down and his arms stretched out in front of him; when a soldier is taking a bath; when a half-dressed soldier is carrying out a message to an officer; when an armed soldier is wandering like a sleepwalker; and when a soldier is taking a break, such as talking, drinking a cup of coffee, or smoking (Walzer, 2006, pp. 139–142). The first three situations demonstrate how to deal with disarmed soldiers, while the fourth and fifth illustrate situations in which armed soldiers are leaving wars or international military operations. He uses these situations to argue that some individuals who should be treated as belligerents do not fulfil the third and fourth criteria. Walzer also believes that people who do not fulfil the conditions specified by the Annex to the Hague Convention may nonetheless be defined as belligerents, if they intend to kill their enemies (Walzer, 2006, p. 142). Based on Walzer's perspective, terrorists and guerrilla fighters, for instance, are defined as belligerents.

Overall, to distinguish combatants from non-combatants, Walzer relies on whether an individual has chosen to kill their enemies: in other words, he classifies belligerents as those who have the intention to kill or harm their enemies. While Walzer gives a clear definition of belligerents, he also specifies situations when they should not

be subjected to military force: that is, when they are captured or surrender. Walzer argues that prisoners of war are not belligerents because they have usually lost their intent to kill or harm their enemies (Walzer, 2006, pp. 46–47). Thus, he distinguishes combatants from non-combatants by whether they have the intention to kill or harm their enemies.

(b) John Rawls

As seen in the previous subsection, Rawls believes that a defensive action in which “well-ordered peoples” attack against those in “outlaw states” comprises just war. On the question of identifying combatants, Rawls believes that those people who belong to “outlaw states” can be categorised as such. However, to distinguish combatants from non-combatants, Rawls divides the people of “outlaw states” into three groups: government leaders or commanders; soldiers; and civilians. Of these three groups, Rawls asserts that only the first group are a legitimate target for military force by “well-ordered people,” while those in the other groups should be protected from the principle of necessity, according to the “Law of Peoples” (Rawls, 2006, pp. 94–95). Rawls believes that since government leaders or commanders have prepared the acts of aggressions, they should be categorised as combatants. On the other hand, Rawls defines the soldiers and civilians of “outlaw states” as non-combatants because they are not responsible for the military actions. Asserting that it is possible for the soldiers and civilians of “outlaw states” to follow the “Law of Peoples” because they did not have any chance of knowing the normative elements of “the Law of Peoples” due to the restriction from government

leaders or commanders of “outlaw states,” Rawls adopts the position that they should not be accused of war crimes. Rawls’ idea of the principle of necessity in *jus in bello* can be summarised as follows: “well-ordered peoples” should not direct force against people pressured into following the rules of “outlaw states,” while the leaders or commanders of those states should be prosecuted as war criminals because they willingly disobey the “Law of Peoples” (Rawls, 2006, pp. 95–96). Overall, Rawls believes that the distinction between belligerents and non-belligerents is based on whether or not they accept the idea of the “Law of Peoples.”

(c) Larry May

Following the just war theories of Hugo Grotius, Francisco Suarez, and St. Augustine, May believes that all individuals should be treated with humaneness and mercy (May, 2007, pp. 104–118). This is the basis for May’s development of his principle of necessity in *jus in bello*, which includes prisoners of war (May, 2007, p. 112). Compared with Rawls and Walzer, May does not attach importance to defining combatants, because of the current situation in international society prevent this: guerrilla activity, for instance, is conducted by people who neither wear uniforms nor openly carry weapons. Rather than focusing on defining combatants, May develops his idea on the principle of necessity by contemplating, “how should we treat people with humaneness and mercy?”. Answering this question, May develops his idea of the principle of necessity in *jus in bello* in the book *War Crime and Just War*. The protection of human rights is the most essential idea

to prevent military force from being used against others. However, May asserts that the use of military power may sometimes be permitted for the sake of “the agony of war” (May 2007, pp.192-194). The idea of “the agony of war” is based on the words of Harry Trumann when deciding to drop nuclear weapons on Hiroshima and Nagasaki as follows: “we have used it [the bombs] in order to shorten the agony of war, in order to save the lives of thousands and thousands of young Americans” (*ibid*). Adopting the idea of Harry Trumann, he specifies that the use of poisons and chemical weapons may sometimes be permitted. Thus, as long as its use would relieve the pain of those who are suffering from death, we may accept to the use of military force.

Overall, May’s idea on the principle of necessity in *jus in bello* is based on treating people with mercy and humaneness. Exercising military force violates rights, which is the antithesis of mercy and humaneness; therefore, we should not wield any military weapons against others. However, May does not prohibit the use of military force entirely: weapons may be used if their use would relieve the pain of the people. This is because he believes that struggling with the pain to the point of death contravenes mercy and humaneness.

While May mentions prisoners of war, he also touches on how government leaders and/or commanders and soldiers should be treated. He adopts the position that all government leaders and/or commanders and state soldiers should be treated with mercy and humaneness, and brought to international courts to be tried for their war crimes.

(d) Summary

Each of the three philosophers and jurists described above comes to the conclusion that the violation of human rights should be minimised. To achieve this goal, each develops the idea of the principle of necessity in *jus in bello*. However, in the current situation faced by international society, it is difficult to distinguish between civilians and soldiers because the latter wear no uniforms or other insignia to demonstrate their affiliation to international militant groups. Therefore, “well-ordered peoples” are required to carefully consider how to treat the peoples of “outlaw states:” this problem includes the application of moral-philosophical judgment by 1) deciding what a state’s soldiers should consider is necessary to maintain international peace and security, in relation to those they encounter in battle; and 2) whether the use of military power is required to accomplish the purpose of military operations. At the same time, soldiers must consider whether to use force against injured people or provide medical treatment. The principle of necessity in *jus in bello* still does not clearly specify “under what conditions a state’s soldiers can legitimately use military force.” By combining the principle of necessity with the principle of proportionality, which we will analyse in the next section, this dissertation will offer clear answers to the question of what kind of tactics are justified.

2.2.2.ii. The Principle of Proportionality

As outlined above, the principle of proportionality is an important element for developing the idea of *jus in bello*. Facing the issues of the current situation in international society, the principle of necessity in *jus in bello* cannot adequately stipulate under what conditions a state's soldiers can legitimately use military force. This is due to the difficulty of identifying combatants, particularly in current international conflicts. States' soldiers are, therefore, required to make rational decisions in distinguishing between combatants to be attacked and non-combatants to be protected. The principle of proportionality in *jus in bello* provides a guideline for making such a rational choice.

As regards *jus in bello*, public international law on war pays less attention to the principle of proportionality than to the principle of necessity (Walzer, 2006, p. 228). Therefore, the principle of proportionality in *jus in bello* will be clarified through the theories based on moral-philosophical perspective. On this subject, the development of Just War Theory by contemporary jurists and philosophers has two core rationales: first, how to minimise the victims of war; and second, what quantity and quality of weapons a state's soldiers should use in defensive action. By examining these two considerations with reference to recent theories, certain criteria of the principle of proportionality in *jus in bello* will be clarified.

(a) Michael Walzer

Although Walzer shares the idea that violence against non-combatants should be

prohibited, he asserts that military operations should be pursued even when non-combatants are endangered thereby (Walzer, 2006, pp. 174–175). As this idea concerns the principle of proportionality in *jus in bello*, this section will analyse the reasons for Walzer's position. His idea on the second element, the extent of weaponry a state's soldiers may use during military operations, will then be introduced.

Walzer explains the principle of proportionality in *jus in bello* as follows: it serves to harmonise the absolute prohibition of attacking non-combatants with the legitimate use of force in military activity (Walzer, 2006, p. 152). Walzer specifies four conditions that must all be satisfied: military activity should be a legitimate act of war; the direct effect of military activity should be morally acceptable; the person who carries out the military activity should be legitimate, in other words, he or she should only aim to achieve morally acceptable effects; and a good effect should outweigh an evil effect, so that the result of military activity will ultimately be an improvement on the *status quo* (Walzer, 2006, p. 152). Walzer considers the third condition to be the most important for the principle of proportionality in *jus in bello*. Provided a state complies with these conditions in its defensive action, he insists that the harming or injury of non-combatants in the course of military operations should be tolerated.

Regarding the extent of weapons which a state's soldiers may use in military operations, the use of certain types of weapon is prohibited by public international law, such as the Biological Weapons Convention, Chemical Weapons Convention, and

Nuclear Weapons Conventions.

(b) John Rawls

As noted in relation to the principle of necessity in *jus in bello*, Rawls requires all peoples to respect human rights. For Rawls, the only legitimate targets for use of military force by “well-ordered peoples” are the government leaders or commanders of “outlaw states.” Rawls, therefore, does not specify the extent of weaponry “well-ordered peoples” should use during military operations. Indeed, he does not develop any idea regarding the principle of proportionality in *jus in bello* in *The Law of Peoples: with “the Idea of Public Reason Revisited.”*

(c) Larry May

In developing his idea of the principle of necessity in *jus in bello*, May advocates using weapons to relieve injured people from pain. Although he acknowledges the necessity to use weapons, he requests that a state’s soldiers identify the extent of weaponry they use in military operations. May believes that this should be based on the principle of proportionality. To reiterate, May’s idea of just war emphasises humaneness and mercy, which together form the bases of his principle of proportionality.

To emphasise the importance of the principle of proportionality in *jus in bello*,

May cites the event in Israel in 1989 when Israeli security forces took military action against innocent civilians living in occupied territories, with the aim of stopping suicide bombings (May, 2007, pp. 212–218). The Landau Commission described the action of Israeli security forces as exhibiting a “moderate measure of physical violence” (the Government Press Office, 1989, p. 181). However, in 1992, the Israeli Supreme Court rejected this interpretation of the Landau Commission, adjudging this use of military force to constitute torture; that is, inhumane treatment (Kremnitzer and Segev, 2000, pp. 509–590). Referring to this event, May analyses the decision of the Israeli Supreme Court regarding how prisoners of war should be treated as follows: the Israeli Supreme Court ruled that human dignity must be respected; in other words, prisoners of war should not be interrogated illegally.

The Supreme Court of Israel set three conditions for the treatment of prisoners of war: the measures should be rational; the measures should be minimal; and any harm should be proportional to the information thereby gained (May, 2007, p. 220). May believes that these three conditions are included in the principle of proportionality, which he interprets as “minimizing suffering or producing goals or values at least as important as those of the other states that are undermined by military assaults” (May, 2007, p. 220). May contends that minimising suffering or injury is a rational choice for a state’s soldiers, and even in war, this remains at the core of humane treatment.

Applying May’s idea of the principle of proportionality in *jus in bello* to

practical cases, he reasons that it is possible for a state's soldiers to use poison weapons in certain situations: that is, when combatants are suffering to the point of death. As we have already considered this situation in relation to his idea of the principle of necessity in *jus in bello*, it suffices to conclude that May believes military force should be used where doing so will minimise suffering or injury.

(d) Summary

While Rawls does not really consider the principle of proportionality in *jus in bello*, the related ideas of just-war theorists, Walzer and May, work effectively on the principle's application to battlefield situations. Although the use of poison weapons, for instance, is prohibited by public international law on war, they express that their use is sometimes required to relieve pain. The principle of proportionality, therefore, plays an important role when a state's soldiers find a reason to use poisoned weapons. This idea seems contrary to the basic idea of Just War Theory that human rights should be protected. However, soldiers need to make a rational choice regarding whether or not injured combatants should be left to struggle with their pain or should be relieved therefrom. While it is difficult for a state's soldiers to make a rational choice during military operations, it is an important factor for a state's government leaders or commanders in considering what tactics are legitimate.

2.2.3. *Jus post Bellum*

Recently, consideration of *jus post bellum* has been particularly important in developing Just War Theory (Osterdahl and Van Zadel, 2009, pp. 176–177). Although the idea of *jus post bellum* is believed to be a recent developments, Immanuel Kant, for instance, mentions issues related to *jus post bellum* from a moral-philosophical perspective: “[I]nternational right [or justice] is thus concerned partly with the right to make war, partly with the right of war itself, and partly with the questions of right after war, i.e. with the right of states to compel each other to abandon their war-like condition and create a constitution which will establish an enduring peace” (Orend, 2000, p. 118, 2007, pp. 574–575). While Kant, in particular, emphasises the importance of considering the issues of *jus post bellum*, other just war theorists, such as Michael Walzer, have included this issue in the idea of *jus ad bellum* because “the object in war is a better state of peace” (Walzer, 2006, pp. 121). In other words, Walzer believes that international military operations should make the people to live safer than before; therefore, the aftermath of international military operations should be clear before engaging in such operations. Aside from this interpretation, Orend has examined why the majority of just war theorists have neglected *jus post bellum*. He finds that they believed well-ordered peoples will deal with the reconstruction issue using moral-philosophical principles: therefore, they believed it unnecessary to consider the issue of *jus post bellum* (Orend, 2007, pp. 573–574). In practice, however, there have been appeals for proper consideration of the issues of *jus post bellum*, to ensure the legitimate reconstruction of former warzones. The ICISS, for

instance, highlighted this importance by quoting the words of Kofi Annan: “if humanitarian intervention is, indeed, an unacceptable assault on sovereignty, how should we respond to a Rwanda, to a Srebrenica – to gross and systematic violations of human rights that offend every precept of our common humanity?” (the International Commission on Intervention and State Sovereignty, 2001, p. 2).

Responding to this request to develop the idea of *jus post bellum*, this dissertation will again employ the principles of necessity and proportionality. There are approximately two activities related to *jus post bellum*: the reconstruction of former warzones to allow people in general to resume their ordinary lives and the political reconstruction of “outlaw states.” This section will analyse the situation that occurs when these two activities have legal legitimacy to operate. This includes the prosecution of government leaders or commanders of “outlaw states” for war crimes. To clarify the legal legitimacy of reconstruction activities, this section will analyse how scholars of public international law have examined the reconstruction of battlefields. It is believed that the UNPKO commenced after the end of Cold War, based on the interpretation of such activities as “regional arrangements” under Article 52-54 of the UN Charter (Gray, 2008). However, since the interpretation is controversial among scholars of public international law, this section will introduce these scholars’ analyses of whether the UNPKO falls within the scope of “regional arrangements.”

Chayes (2013, pp.292-293), for instance, specifies that Article 39 of the UN

Charter demonstrates the legitimacy of the UNPKO activity. It seems that international society has the intention to commit to reconstruction activity: the execution of PKO, for instance, is a significant example that illustrates this tendency. Although a state may provide support for reconstruction activity, the contributing states cannot control the defeated government, as this would violate the principle of non-interventionism, one of the fundamental principles specified in the UN Charter (Article 2.7.). With no concrete regulation of the degree of support to provide during reconstruction activity, moral-philosophical criteria will provide guidelines regarding what degree of support states should provide so that their activities do not contravene the principle of non-interventionism.

2.2.3.i. The Principle of Necessity

The principle of necessity in *jus post bellum* concerns the reasons for engaging in reconstruction activities in the battlefield. As this related idea has recently been developed, this section will first introduce how just war theorists and philosophers analyse issues related to the principle of necessity. Recognising recent developments on this topic, the idea of philosopher Brian Orend is evaluated in addition to those two jurists and philosophers featured prominently in earlier sections: Michael Walzer and John Rawls. This section will conclude by elaborating the idea of the principle of necessity in *jus post bellum*.

(a) Michael Walzer

While Walzer does not develop the idea related to reconstruction activities, he does specify that regional arrangements are legitimate for states to maintain international peace and order. According to Walzer, states can conduct “humanitarian intervention” where a government commits a massive violation of human rights, such as a genocide (Walzer, 2006, p. 101). From Walzer’s perspective, a significant number of genocides have occurred in recent times. Therefore, the international community must engage in “humanitarian intervention.” Although the need to conduct “humanitarian intervention” is high, Walzer observes that it is necessary for states to have a clear reason for legitimatising the act of “humanitarian intervention” (Walzer, 2006, pp. 101–102). He identifies the protection of violated peoples as an appropriate reason for such intervention and points out that “humanitarian intervention” is conducted for the purpose of diplomacy: to contribute to the work of international society in maintaining international peace and order. Although a state’s reasons may vary, Walzer asserts that the most important consideration in determining the legitimacy of “humanitarian intervention” is a balance between a variety of reasons. This balance will be explained in relation to the principle of proportionality in *jus post bellum*.

(b) John Rawls

Though Rawls does not use the term *jus post bellum*, he does require the rebuilding or

reconstruction of defeated states. To reiterate, he advocates the importance of “well-ordered peoples” protecting the civilians of “outlaw states,” as “well-ordered peoples” are obliged to teach the “Law of Peoples;” otherwise, the civilians of “outlaw states” will be denied their opportunity to know this law (Rawls, 2006, pp. 106–112). Overall, Rawls claims that reconstruction activity should be undertaken to allow people in “outlaw states” to become “well-ordered people.”

Thus, although he does not clarify what constitutes legitimate reconstruction, it might be inferred that Rawls bases legitimacy on the principles of “the Law of Peoples.”

(c) Brian Orend

Brian Orend is a philosophy professor specialising in Just War Theory and human rights. Unlike the other three authors, Michael Walzer, John Rawls, and Larry May, Orend focuses on issues related to *jus post bellum*. Orend explains that *jus post bellum* is equally important to *jus ad bellum*. Based on Kant’s idea, Orend emphasises the need to develop *jus post bellum* as follows: “the raw fact of military victory in war does not (...) confer moral rights upon the victor, nor ethical duties upon the vanquished” (Orend, 2007, p. 578).

In developing his idea of the principle of necessity in *jus post bellum*, Orend specifies that there are two related elements for states to consider: “right vindication” and

“discrimination” (Orend, 2007, p. 580). This section will separately consider these two elements in order to analyse Orend’s idea.

“Right vindication” suggests that the respect for and protection of human rights is legitimate for states to consider during the various phases of war: beginning, middle, and after. Therefore, Orend asserts that it is necessary for states to respect human rights during all three phases. First, as Walzer also claimed, it is important for states to consider human rights at the beginning and during the war. However, Orend adds the importance for states, particularly victor states, to respect human rights after the war ends because any disrespect for human rights might cause another war. If the human rights of defeated states’ civilians are violated by victor states, they will have just cause to fight against the victor states. To cut the chain of war that is perpetuated by lack of respect for human rights, Orend emphasises that it is important for states, particularly victor states, to vindicate human rights (Orend, 2007, p. 580).

Regarding discrimination, Orend asserts that the people of defeated states should be divided into three categories when punishment for war is meted out: civilians; government leaders and/or commanders; and soldiers. Orend believes that civilians should be exempted from accusation of war crimes, while the government leaders or commanders of a defeated state should be prosecuted as war criminals (Orend, 2007, p. 580). Soldiers of defeated states should also be “held accountable to investigation and possible trial” (Orend, 2007, p. 580). He insists that “proper punishment” is effective;

therefore, we need to develop the idea of *jus post bellum* by combining the idea on the principle of proportionality.

Orend develops his idea of *jus post bellum* with two aspects: reconstruction and compensation. According to him, victor states bear a responsibility to guide the civilians of defeated states to become well-ordered peoples; at the same time, they are also responsible for maintaining peace and order in international society (Orend, 2000, p. 124). Orend believes that the long-pursued goal of international society, the maintenance of peace and security, will be achieved if the numbers of well-ordered peoples increases.

(d) Summary

From these ideas regarding the principle of necessity in *jus post bellum*, it can be concluded that victor states should conduct reconstruction activities after a war, such as PKO. As the war was first triggered by the defeated states' violation of human rights, the victor states must respect human rights to demonstrate to the people of defeated states the normative principles by which to live in international society.

2.2.3.ii. The Principle of Proportionality

While the principle of necessity in *jus post bellum* demonstrates why victor states should support the rebuilding or reconstruction of defeated states, the principle of proportionality

also merits consideration. The principle of proportionality in *jus post bellum* provides a guideline regarding how much support victor states should provide for defeated states, since an excess of support might be comprise interference in the internal affairs of those states. To analyse how modern jurists and philosophers, specifically Walzer, Rawls, and Orend, deal with this issue, this section will introduce their respective ideas regarding the principle of proportionality in *jus post bellum*. The section will then conclude by summarising their ideas.

(a) Michael Walzer

Walzer emphasises the need to consider the principle of proportionality in *jus post bellum*, by citing the words of international lawyer Montague Bernard: “Of two things, one; the interference in the case supported either turns the balance, or it does not. In the latter event, it misses its aim; in the former, it gives the superiority to the side which would not have been uppermost without it and establishes a sovereign, or a form of government, which the nation, if left to itself, would not have chosen” (Bernard, 1860, p. 21). Referring to these words, Walzer urges victor states to consider the principle of proportionality in *jus post bellum*: namely, the balance between interference and non-intervention. In this context, non-intervention is explained by Walzer as neutrality or ignoring. He defines non-intervention as neutrality on the basis that neutral states are the only ones “not engaged in war” (Walzer, 2006, p. 234). In this sense, “neutrality” is a form of the non-intervention. Applying the same scheme, Walzer explains ignorance as the other form of

non-intervention, asserting that a state may elect not to intervene in an “outlaw state” despite being aware that it is violating human rights through its non-intervention. As the principle of proportionality in *jus post bellum* does not apply to either neutral or ignored states, this section does not further consider them.

By contrast, Walzer believes that well-ordered people use military force against “outlaw states” with the intention (see 2.2.1.i.). He expresses this belief by quoting Sir Basil Henry Liddell Hart, a military theorist, that “the object in war is a better state of peace” (Liddell, 1954, p. 338). Adopting Liddell’s position, Walzer believes that states that engage in war are the objects to be considered with regard to the issue of the principle of proportionality in *jus post bellum*.

(b) John Rawls

As noted in the previous section, Rawls only considers the principle of necessity in *jus post bellum*. This seems attributable to his belief that “well-ordered peoples” do not violate “the Law of Peoples,” according to which “peoples are to observe a duty of non-intervention” (Rawls, 2006, p. 37). Therefore, Rawls believes that “well-ordered peoples” should not interfere in the internal affairs of “outlaw states.” Based on this belief, the principle of proportionality in *jus post bellum* is entirely absent from *The Law of Peoples: with ‘the Idea of Public Reason Revisited.’*

(c) Brian Orend

Orend discusses the idea of *jus post bellum* based on peace settlement. He states that the goal of *jus post bellum* is to change the defeated state to “a minimally just state” (Orend, 2007, p. 581). He continues that there are two basic ways for a defeated state to become “a minimally just state:” first, purge the old regime, which might cause aggression, tyranny, or atrocity; or second, accept the new regime, which respects human rights in general (Orend, 2007, pp. 584–585). The goal of *jus post bellum* and the process of achieving this goal are clear; however, Orend believes that we need to give more consideration to *jus post bellum*, in particular, who will be in charge of the reconstruction work. By considering this issue, we may reach an answer on how much support the victor states may provide for reconstruction activities.

Orend explains that there are two roles in reconstruction activities: the roles of victor states; and the role of the international community, which does not mean the UN in this context. Orend believes that the victor states should follow certain rules when reconstructing defeated states since the former have overthrown the previous regime of the latter (Orend, 2007, p. 588). On the other hand, Orend believes that the international community should also play the role of “watchdog” and “junior partner” in any reconstruction activities (Orend, 2007, p. 588). There are two functions as watchdog: first, to keep an eye that the defeated states follow the new regime; and second, to keep an eye that the victor states do not control the defeated states. On the other hand, the role of the

international community as junior partner is more complicated: to provide aid for reconstruction although the war itself was unjust (Orend, 2007, p. 588). To explain the role of junior partner, Orend refers to the reconstruction activities of Afghanistan and that of Iraq as examples. He examines the fact that the international community did not hesitate to provide support for reconstructing Afghanistan, but they did not provide sufficient support to Iraq. The difference in quality of support provided to these two countries was, Orend believes, led by the justification or legitimacy of war itself: in other words, the international community does not insist on participating in unjust wars (Orend, 2007, pp. 588–589). While providing support for reconstruction is not a duty of the international communities, Orend emphasises that it is important for the international community to take the role of “junior partner.”

Returning to the issue of how much support victor states or the international community should provide for reconstruction of defeated states, Orend’s response is that they should create “a minimally just community” (Orend, 2007, p. 582). Orend believes that the post-war regimes in Germany and Japan (1945-55) were successful; therefore, it is possible for victor states and the international community to provide reasonable support to reconstruct a defeated state (Orend, 2007, p. 582). The most important factor, according to Orend, is that victor states bear in mind that local people continue to live in defeated states. Quoting Kant, Orend believes that the post-war period is the easiest time for local people to accept a new regime, which differs from the previous regime in which human rights were not respected (Orend, 2007, p. 582). Therefore, providing a new regime for

the defeated state is the only role that victor states should play: the construction of a new government based on the new regime will be conducted by the local people in the defeated state. If the defeated state should err once more in the direction it takes, the international community is there to prevent it; in this sense, the international community plays the role of both watchdogs and junior partner.

Overall, Orend's idea of the principle of proportionality in *jus post bellum* can be summarised as follows: the reconstruction of defeated states should be based on the will of their civilians, although victor states should introduce the basic principles of the law of war or the political regime, to which the citizens of defeated states should adhere.

(d) Summary

From analysing these ideas of the principle of proportionality in *jus post bellum*, we can conclude that victor states should pay attention to the will of defeated civilians, since they will exercise sovereign power once reconstruction is completed. In this sense, victor states should consider the principle of proportionality in *jus post bellum* when conducting PKO activities: the soldiers of victor states should not force defeated states' civilians to follow the principles of the "Law of the Peoples;" rather, they should ask the civilians to accept those principles on the basis that they are normative in contemporary international society.

2.3. Conclusion

From analysing Just War Theory, it is clear that despite changes in the situation faced in international society, the basic consideration regarding war have remained the same since ancient times. To conclude this chapter, this section will summarise the three categories to develop in Just War Theory in response to the contemporary international situation: *jus ad bellum*, *jus in bello*, and *jus post bellum*.

First, *jus ad bellum* concerns whether a particular situation justifies waging war. A state can only use military force against another when this is required to defend its territory or to maintain international peace and security. Therefore, all states are permitted to use military force if international society is threatened by aggressors.

Second, *jus in bello* concerns the conditions under which a soldier can kill or harm others on the battlefield. This concept describes what soldiers should consider when conducting military operations. In their idea of *jus in bello*, philosophers and jurists considering Just War Theory's application to the contemporary international situation in war require soldiers to respect human rights: for instance, they advocate the protection of civilians and/or soldiers of "outlaw states" because they have the chance to follow the normative elements to maintain international peace and security, namely respect for human rights. On the other hand, the government leaders or commanders of "outlaw states" should be prosecuted as war criminals because they are responsible for aggression against

other states. Overall, a state's soldiers should remember to protect human rights while engaging in military operations.

Third, *jus post bellum* has received much more attention in the post-Cold War era, due to the increasing global roles of related activities, such as the UNPKO. The issue regarding *jus post bellum* eliminates the gap between the support activities of the UNPKO and interference in the internal affairs of defeated states. Prior to WWII, victor states occupied defeated states to maintain order. However, the system changed pursuant to the UN Charter's prohibition of interfering in another state's internal affairs. Therefore, the issue of *jus post bellum* indicates what victor states should consider when supporting the reconstruction of defeated or "outlaw states." By examining the theories regarding *jus post bellum*, this chapter found that victor states should respect the will of defeated or "outlaw states" civilians. Though this might differ from victor states' intention, it should be followed where this accords with the normative elements of respecting human rights.

Overall, these three categories should all be considered when a state decides to wage a defensive war against wrong-doings. The next three chapters will examine how the Japanese government, particularly the Koizumi administration and the second Abe administration, reached decisions on committing to international military operations. These investigations will clarify whether, in setting government policy with respect to international military operations, the GOJ considered the applicable normative principles of Just War Theory.

Chapter Three. Japan's Participation in OEF: the 2001 Afghanistan War

This chapter examines whether the GOJ took the normative ideas of Just War Theory into considerations when deciding whether or not Japan would participate in Operation Enduring Freedom (hereafter, OEF). This operation, well-known as the 2001 Afghanistan War, is understood to have comprised retaliation for the 9/11 attacks (hereafter, 9/11). This case is selected for in-depth examination because it was Japan's first instance of participation in an international military operation.

To examine the case, this chapter will open by introducing the US government's purpose in conducting OEF. Since OEF is well-known to have comprised retaliation for 9/11, the details of those attacks will also be described to clarify the reason for attacking Afghanistan.

The second section of this chapter will examine the GOJ's reaction to the US decision. Although Japan was one of the sovereign states that voiced to support for the US, the JCL restraints made it difficult to dispatch the JSDF to the Indian Ocean (see 1.2.). To overcome this restraint, the GOJ decided to enact a temporary statute, called the Anti-Terrorism Special Measures Law (*tero taisaku tokusohō*: hereafter, ATSMML). This statute was enacted to dispatch the JSDF without the need to revise the JCL (which would have taken longer), and it reflects the government's intention to support the US quickly (see 1.3.). When the ATSMML bill was passed in the Diet on 29 October 2001, PM Koizumi

declared that “... the Government of Japan has devoted its utmost efforts to cooperate with the rest of the international community in our endeavors to prevent and eradicate international terrorism in order to ensure the peace and security of the international community including Japan itself” (Ministry of Foreign Affairs of Japan, 2001). This clearly furthermore demonstrates the government’s intention to participate in OEF; however, the second section will clarify what exactly the Koizumi administration had in mind in deciding to bring the ATSMML bill to the floor of the Diet.

Based on the underlying rationale for Japan’s decision to participate in OEF, the third section will analyse what Diet members considered when the ATSMML bill was brought to the Diet. Although the decision to participate in OEF was made immediately, innumerable debates were held in the Diet on the legitimacy of Japan’s participation. Since it is impracticable to examine all related discussions, this chapter will focus on four elements: whether Diet members found the right intention for engaging in OEF (3.3.1.); whether OEF was proportional to 9/11 (3.3.2.); what role was played by JSDF personnel in the operation (3.3.3.); and whether the measures taken by JSDF personnel were proportional to the situation in Afghanistan (3.3.4.). The first two elements are related to the principles of necessity and proportionality in *jus ad bellum* that set the conditions for the legitimate use of force: therefore, this analysis will help to examine whether the GOJ considered the normative principles in *jus ad bellum* when deciding to participate in OEF (3.4.). The third and fourth analyses reflect how the GOJ decided upon the role to be taken by the JSDF during the operation. The principles of necessity and proportionality in *jus*

in bello set the limitations upon the use of military weapons against others; therefore, these two analyses will help to examine whether the GOJ considered the normative principles in *jus in bello* before Japan's participation in OEF (3.5.).

By examining whether the GOJ's perspectives on OEF participation corresponded to the normative principles of combating international military actions, this chapter can come to a conclusion regarding whether the GOJ, particularly the Koizumi administration, considered these normative ideas when deciding to participate in OEF.

3.1 Outline of the Crucial Events

On 11 September 2001, al-Qaeda coordinated military attacks against four prominent buildings in the US: the North and South Towers of the World Trade Centre, the Pentagon, and either the White House or the Capitol Building (Bush, 2010, p. 132). The fourth attack was unsuccessful, so speculation over its intended target has been controversial. Since these attacks were conducted by hijacking passenger airliners, the victims included the airline passengers, people working in the buildings that were hit, and those who lived in the surrounding areas. Approximately 3,000 people were killed and more than 6,000 injured in the attacks (CNN, 2015). In his diary, President George W. Bush (term of office: 20 January 2001 - 20 January 2009) described this incident as “the Pearl Harbor of the 21st century” (Woodward, 2004, p. 24).

After 9/11, the US intelligence agencies determined that al-Qaeda had been responsible for the incident. Although President Bush had known of al-Qaeda as an Islamic extremist group since the time of his presidential campaign, he was unaware of its underlying ideology and the group's supporters (Bush, 2010, pp. 134, 141). The US, therefore, focused on collecting detailed information related to the militant group.

The OEF, well-known as the "War on Terror," was launched by the US on 7 October 2001. Its coalition allies, such as the United Kingdom (hereafter, UK), declared their intention to provide military support to the US (Blair, 2011, pp. 341-470). However, before the US and its coalition allies commenced OEF, the UN Security Council adopted Resolution 1368 (hereafter, UNSRC 1368) on 9/11. This resolution "call[s] on all states to work together urgently to bring to justice the perpetrators, organizers and sponsor of these terrorist attacks and stress[es] that those responsible for aiding, supporting or harbouring the perpetrators, organizers and sponsors of these acts will be held accountable" (UN Security Council, 2001b). The resolution clearly demonstrates that issues related to 9/11 should be resolved by international courts. However, the US and its coalition allies were not satisfied with UNSCR 1368. For instance, John Negroponte, the US Ambassador to the UN, clarified his state's position as follows: "in accordance with Article 51 of the Charter of the United Nations, I wish, on behalf of my Government, to report that the United States of America, together with other States, has initiated actions in exercise of its inherent right of individual and collective self-defence following the armed attacks that were carried out against the United States on 11 September 2001" (UN

Security Council, 2001a). This message clearly reflects that the US believed in their right intention to exercise the right to self-defence under Article 51 of the UN Charter, although UNSCR 1368 states that it should be left to international courts to accuse al-Qaeda of war crimes.

3.2 The Intention of the Koizumi Administration in Passing the Bill of the Anti-Terrorism Special Measures Law

When the US clearly stated its opinion regarding 9/11, PM Koizumi responded with a clear statement on his position as follows: “[9/11 was] not an attack against just the United States but an attack against freedom and democracy” (Bush, 2010, p. 141).

When PM Koizumi demonstrated his support of the US, the statutes that Japan could apply to send the JSDF outside of its territory were either the 1999 Surrounding Area Emergency Measures Law or the Act on Cooperation with the United Nations Peace Keeping Activities (Hagstrom and Williamsson, 2009, pp. 254–255). The former is applicable to situations in which US military activities are conducted in “areas surrounding Japan,” while the latter permits the JSDF to be dispatched outside of Japan to support UNPKO. However, neither situation was applicable to OEF: Afghanistan, where al-Qaeda were believed to be hiding, lies far beyond the “areas surrounding Japan” (*ibid* p.255), while OEF was neither conducted by the UN nor categorised as UNPKO (see 3.1.). Therefore, it was difficult for Japan to apply either statute to legitimise its participation in OEF. Nevertheless, PM Koizumi wished to support the

US, sympathising with its cause following 9/11, and as a result the ATSMML bill was brought to the floor of the Diet. The intention in so doing was reflected in the purpose of the ATSMML “to enable Japan to contribute actively and on its own initiatives to the efforts of the international community for the prevention and eradication of international terrorism, thereby ensuring the peace and security of the international community including Japan” (Prime Minister of Japan and His Cabinet, 2001).

3.3 Diet Deliberations

When the Koizumi administration brought the ATSMML bill to the floor of the Diet on 5 October 2001, innumerable discussions ensued. This section will focus on debates held by Diet members in relation to Japan’s participation in OEF: in particular, it focuses on whether Diet members pointed out the following four issues: the right intention or a just cause for engaging in OEF; the quality and quantity of OEF; the role of JSDF personnel during OEF; and the quality and quantity of measures to be taken by JSDF personnel during this operation. This examination will be based on Japanese Diet records¹ provided by the National Diet Library, interviews conducted for this dissertation (see Appendix), and the general plan submitted by the Cabinet after the bill was adopted.

¹ Although the ATSMML bill was brought to the floor of the Diet on 5 October 2001, the related debate, particularly on the US conducting OEF, was held in the Diet from 12 September. Therefore, this chapter focuses on the debates in the Diet between 12 September and 29 October, the date of enacting the ATSMML.

3.3.1. Reasons for Conducting OEF

When the Koizumi administration brought the ATSML bill to the floor of Diet, members of the opposition parties, particularly the then DPJ, opposed the attack on Afghanistan. First, they argued that following the UNSCR, issues related to 9/11 should be resolved by the UN or international courts. For instance, a then DPJ member emphasised the necessity to prioritise the UN Resolution by asking Tanaka Makiko, the then Minister of Foreign Affairs, the following question: “although Japan has a close relationship with the US, which is now preparing for military activities against Afghanistan, Japan should enter into a negotiation with the UN Security Council to adopt a stricter resolution than UNSCR 1368, so that the UN can accuse al-Qaeda of war crimes” (Azumi Jun, 18 September 2001). He continued by referring to the words of Ueda Isamu, a member of Kōmeitō: “this diplomatic negotiation is required for Japan to maintain international peace and security because the Islamic people have been persecuted by the people of the US and Europe even though there is no relationship between the Islamic people and al-Qaeda” (Azumi Jun and Ueda Isamu, 18 September 2001).

Similar opinions were given in the Diet after PM Koizumi met with President Bush on 25 September 2001. A then DPJ member expressed his opinion as follows: “the war on terror should not be launched as retaliation with military force as it is prohibited by the Declaration on the Principle of International Law concerning Friendly Cooperation among States in accordance with the UN Charter, which was adopted in 1970: all

sovereign states have the duty to refrain from retaliation with force. Although international society, mainly the US, has been planning to launch the war on terror in retaliation for 9/11, you [PM Koizumi] should tell President Bush without reserve that we [international society] should not take any military action against al-Qaeda: we should accuse the members of al-Qaeda of war crimes” (Tsunoda Giichi, 2 October 2001).

Although opposition party members pointed out eight times that there was no right intention or just cause for attacking Afghanistan (Hatoyama Yukio, 1 October 2001; Shii Kazuo and Doi Takako, 2 October 2001; Ichida Tadayoshi and Okazaki Tomiko, 3 October 2001; Ueda Isamu, 4 October 2001; Okada 12 October 2001; and Warashina Mitsuharu, 19 October 2001), Cabinet members supported the US position because they believed that al-Qaeda’s actions against the US had not been justified. Their opinion of the US decision to conduct OEF was formulated as follows: “not only the US but also the international society should take a resolute attitude toward terrorism” (Koizumi Junichirō, 2 October 2001).

As seen in the opinion of opposition parties on the decision to attack Afghanistan, Japan had no right intention for providing logistical support to the US military. PM Koizumi was also evidently aware of this lack of right intention: “Japan does not have the right to exercise individual self-defence as the three necessary conditions²

² The three necessary conditions for Japan to exercise the right to self-defence are: 1) there is an imminent and unlawful infringement attack against Japan; 2) there are no other suitable measures to take against the offender; and, 3) the attack against the

to exercise the right to self-defence have not been met in this situation” (11 October 2001). Thus, the GOJ needed to find a reason for providing logistical support to the US military in OEF and Cabinet members subsequently provided three different reasons: to maintain the US-Japan security relationship; to advance Japan’s national interest; and to demonstrate that Japan would not make the same mistake as it had during the Gulf War.

First, the treaty-based necessity for strengthening Japan’s relationship with the US was specified many times in the Diet. For example, Asō Tarō, the then Minister of State for Economic and Fiscal Policy, contended: “Japan should contribute to the US in providing logistical support because there is a security treaty between Japan and the US” (1 October 2001). This opinion was echoed by Tanaka Makiko: “Japan would like to provide a lot of support to the US because Japan is willing to back up the US up in launching a war on terror to eliminate al-Qaeda” (18 September, 2001). It is important to note that Tanaka’s words came in response to a question from a LDP member, Yoneda Kenzō, who asked for the Koizumi administration’s view on how Japan, without considering the requests from the US, should approach the war on terror (18 September, 2001). The responses of Tanaka and Asō seemingly adopt the position of realism in IR because Tanaka stated that providing support would strengthen the relationship between Japan and the US. Together with PM Koizumi’s statement, it can be inferred that the Koizumi administration believed that providing support pursuant to the US requests would strengthen their relationship with the US, and that this was more important than

offender should be the minimum and necessary military attack.

constitutional compliance.

Second, Diet members specified the necessity to strengthen the relationship with the US to advance Japan's national interests. For instance, a then DPJ member raised the issue of intelligence on international militant groups, such as al-Qaeda, as an example of Japan's national interests: he specified that Japan, particularly the Ministry of Foreign Affairs of Japan (hereafter, MOFA), faces difficulty collecting information related to international militant groups and as such is dependent on the US for gathering related information (interview with a then DPJ member of the House of Representatives, 15 May 2015). Information on international militant groups that is collected by the US is sent to the border controls operated by the Ministry of Justice: therefore, receiving this intelligence is important for Japanese security. He continued that MOFA, in particular, strongly believes that responding to the US requests would advance Japan's national interests.

Third, participation in OEF was considered necessary to demonstrate that Japan had learned from its experience in the Gulf War. As noted in Chapter One, Diet members were conscious that the GOJ's response to the Gulf War had been unsuccessful. Yoneda Kenzō, for instance, summarised this point as follows: "Japan should learn from the lesson of the Gulf War, having not been thanked by others despite providing a lot of financial support" (18 September 2001). Based on Japan's Gulf War experience, Diet members insisted that Japan's support for the US military should be more active than

merely providing financial assistance. They, therefore, concluded that Japan should participate in OEF by providing logistical support to the US military, as requested by the US (Koizumi Junichirō, 5 October; Ishiba Shigeru, 10 October; and Fukuda Yasuo, 25 October 2001).

By elaborating these three reasons, Diet members claimed to have found the right intention for providing logistical support to the US military during OEF. The next issue for analysis is whether Diet members considered the quality and quantity of support they would provide for OEF.

3.3.2. Quantity and Quality of OEF

The US, the victim of 9/11, was not the only state that decided to carry out OEF. Its allies, including the UK, supported conducting OEF to eliminate al-Qaeda (see 3.1.). The GOJ had known that not only the UK but also Australia would become involved in attacking Afghanistan (Shirahama Kazuyoshi, 3 October 2001). Thus, Diet members asserted the need to set the goal of OEF (Ueda Isamu, 18 September 2001; Tsunoda, 2 October 2001). They pointed out the possibility that the scale of OEF would exceed the traditional level of retaliation because the US had identified this operation as a war (2 October 2001). Although anxiety regarding the scale of operation was mentioned, Cabinet members strongly recognised that the operation, or so-called war on terror, was a matter pertinent to all sovereign states and on this basis, Japan should also play a role in OEF (Tanaka

Makiko, 18 September 2001; Koizumi, 2 October 2001). Seemingly, therefore, Cabinet members did not consider the scale of the operation, because they believed that it would be accomplished by eliminating al-Qaeda.

However, the necessity to consider the principle of proportionality in OEF was, in fact, mentioned by Abe Kōki, a professor of public international law, when invited as a speaker to a public hearing. He explained the legitimate use of force as follows: “as long as the quantity and quality of attack is balanced, the use of force is legitimate” (Abe Kōki, 25 October 2001). Although he pointed out that the quality and quantity of OEF would not be in balance with the 9/11 attacks, none of the Diet members questioned him further. Based on a search for the quality and quantity of OEF on the National Diet Library website, it seems that Abe Kōki was the only person to point out this issue when related debates were held in the Diet.

Since no related issues were debated in the Diet, the interview was conducted to ascertain whether Diet members considered the quality and quantity of OEF. The interview shows that Diet members believed that the degree of support provided by Japan to the US should have comprised the minimum and only necessary use of force (interview with a then DPJ member of the House of Councillors, 6 July 2015). Since this idea was seemingly shared among Diet members, another question was brought to the interviewees: whether the support provided during OEF comprised the minimum and only necessary use of force. One Diet member responded that Japan did not need to consider

this issue because JSDF personnel did not harm anyone in Afghanistan. He believe that, as long as JSDF personnel do not harm or kill anyone, the military power they exert can be considered the minimum and only necessary use of force. Although a large number of innocent people were killed or harmed in Afghanistan during OEF, the harm was caused by US personnel (*ibid*); therefore, this issue was not necessary to be discussed in the Diet because Japanese civilians are not interested in the fact that many innocent civilians were harmed or killed. The same interviewee also expressed his belief that the innocent people killed during OEF would have been victims even if Japan had not participated in the operation. Therefore, he believes it unnecessary for Japan to consider how much support to give the US.

Another Diet member specified that the difficulty lies in defining what is meant by the minimum and only necessary use of force is (interview with a then DPJ member of the House of Councillors, 6 July 2015). He believes that there is no just war because it is impossible not to harm or kill innocent civilians while engaging in war. Defining himself as a realistic person in this sense, he describes Japan as a non-independent state because the capital of Japan, Tokyo, is controlled by the US military stationed in Yokota Air Base. Since Japan is not independent from the US, particularly in terms of security, it is difficult to ignore US requests for support. While Japan should follow the principle of minimum and only necessary use of force, it is difficult to adhere to this principle because it is more important for Japan to adhere to US requests. In sum, the minimum and only necessary use of force is only an idealistic principle because Japan is not yet independent

from the US.

3.3.3. Role of JSDF Personnel

With PM Koizumi's intention to dispatch JSDF personnel to provide logistical support to the US military, he announced that Japan would implement seven measures to support OEF: providing medical, transportation, and supply support to the US military in Afghanistan; providing support to strengthen US military and Japanese facilities; dispatching the JSDF to collect information relevant to OEF; sharing information related to immigration control; expanding the area in which Japan would provide humanitarian and economic support to Pakistan and India, the US's co-operating states, during OEF; supporting displaced people in the area within which Japan provided humanitarian assistance; and cooperating with other countries to avoid economic confusion (Koizumi, 2001). Although these seven measures reflect the intention of PM Koizumi, due to the JCL restriction, the members also had to consider where the JSDF would be dispatched to achieve these goals of international policy (see 1.2.).

Due to the JCL restriction, frequent discussions were held in the Diet on the area to which the JSDF would be dispatched and the activities they would undertake. For example, Yoneda Kenzō mentioned the difficulty of dispatching JSDF personnel to Afghanistan, with reference to the 1999 Surrounding Area Emergency Measures Law (see 3.2.). According to Article 2 of this Act, the area in which Japan can provide logistical

support to the US military is specified as “the territorial waters of Japan and the open sea in areas surrounding Japan, which also includes Japan’s exclusive economic zone.” Referring to this Article, Yoneda pointed out that Afghanistan lies outside of the permissible area for dispatch, as it lies neither in the territorial waters of Japan nor in the open sea in areas surrounding Japan (18 September, 2001). He also raised the possibility of applying the US-Japan Security Treaty to support the US; however, he came to the conclusion that it would be difficult to apply this treaty because Afghanistan is far away from the Far East (*ibid*).

Despite Yoneda’s concern regarding the dispatch area, no Cabinet members provided a comprehensive response to his concern. As Tanaka Makiko noted: “I do not have any opinion regarding your concern because we do not know the tactics of the US on OEF yet” (*ibid*). Abe Shinzō, the then Deputy Chief Cabinet Secretary, added: “we would like to excuse ourselves from responding to your question as we do not know what kind of measures the US military will take during the operation” (*ibid*).

Although Cabinet members did not answer the question on the dispatch area, a significant number of questions were posed in the Diet. When Japanese warships left port with Kitty Hawks on 21 September 2001, Diet members queried the legal basis for the departure. As outlined in 3.2., the 1999 Surrounding Area Emergency Measures Law and the Act on Cooperation with the United Nations Peace Keeping Activities provide the legal basis upon which Japan may dispatch forces overseas. Thus, Hatoyama Yukio

raised a question to PM Koizumi in the Diet, on the legal basis for Japanese warships leaving port (1 October 2001). In response, PM Koizumi cited Article 5 (18)³ of the Act of Establishment of the Ministry of Defence, explaining that their mission was to undertake investigation and/or research activities (*ibid*).

Azuma Shōzō continuously asked PM Koizumi for the legal basis upon which JSDF personnel had been dispatched to the Indian Ocean or Pakistan (2 October 2001). Doi Takako also proposed the impossibility of Japan dispatching JSDF personnel to either of these area to provide logistical support to the US (*ibid*). Despite these concerns, PM Koizumi did not provide a response regarding the legal basis for dispatching JSDF personnel to the Indian Ocean or Pakistan. Other Diet members expressed their opinions on the dispatch area as follows: “the active area [of JSDF personnel] should be drawn as a clear line from the battlefield” (Ōta Akihiro, 1 October 2001; Shirahata Kazuyoshi, 3 October 2001). While large numbers of Diet members pointed out the necessity of drawing a clear line, a DPJ member stated that JSDF personnel should not be dispatched to Pakistan (Ito Hidenari, 10 October 2001). PM Koizumi replied as follows: “[Japan] would like to obtain sufficient information on Pakistan from the Pakistan government and United Nations High Commissioner for Refugees (hereafter, UNHCR), because there are more than 2 million refugees in Pakistan at the moment” (10 October 2001). Thus, it seemed that the dispatch area was not an issue of concern to the Japanese Cabinet, as PM

³ When the Ministry of Defence became the Defence Agency in 2007, this article number changed to Article 4 (18).

Koizumi specified that accomplishing the operational objectives was more pertinent.

No further discussion on the dispatch area was held in the Diet after the Cabinet submitted the ATSMML bill on 5 October 2001. The dispatch area was mentioned once by PM Koizumi after the submission of the bill; however, he merely stated that it was “not a battlefield” (11 October 2001), but did not clarify where this so-called “non-battlefield” would be. Therefore, it seems that the dispatch area was not a main concerns for Cabinet members: their main concern was the fact that Japan had followed the request of the US without revising the JCL.

Warships	Japanese Territories
	The Indian Oceans (including the Persian Gulf) and its Airspace
	Diego Garcia ⁴ and its Airspace
	The Areas along the Coast of the Indian Ocean and its Airspace
	The Commutable Path between the Areas Specified in Above
Aircrafts	Japanese Territories
	The Territories of Guam and Diego Garcia
	The Areas are on the Coast of the Indian Ocean
	The Commutable Path between the Areas Specified in Above

Figure 3-1 The Dispatch Areas for JSDF Personnel during OEF

(Source: author based on the General Plan published by the Cabinet on 16 November 2001)

⁴ Diego Garcia is an atoll located in the central Indian Ocean. It is approximately 1,800 kilometres far away from the southern of India.

Figure 3-1 shows the dispatch area for JSDF personnel during the operation. As can be seen, they were dispatched to the Indian Ocean, the place that Diet members had in mind, but not to Pakistan. Although Cabinet members mentioned that JSDF personnel would be dispatched to both the Indian Ocean and Pakistan, Guam was added when the general plan was determined by the Cabinet. Overall, it is evident that the GOJ dispatched JSDF personnel as logistical support to the US army since the areas involved contained US army facilities.

While the dispatch area of JSDF personnel was one of the significant issues to be discussed in the Diet, Diet members were also concerned about whether or not JSDF personnel would use military weapons during OEF (Hatoyama Yukio, 1 October 2001; Doi Takako, 2 October 2001; Shirahama Kazuyoshi and Okazaki Tomiko, 3 October 2001; Kawai Masatomo and Azumi Jun, 11 October 2001; Yoneda Kenzō, 15 October 2001). This was of concern because the scale of operation would far exceed any previous operations in which Japan had engaged, such as UNPKO. Referring to Article 3 of the 1999 Surrounding Areas Emergency Measures Law, Ueda Isamu raised the possible measures to be taken by the JSDF during OEF as either logistical support⁵ or search and rescue activity⁶ (18 September, 2001). However, Ueda asserted the difficulty of applying

⁵ According to the Act, logistical support is defined as follows: the measures which Japan practices by providing military commodities and roles to the US military.

⁶ This activity is clarified as follows: the activity by which Japan searches for and rescues combatants while an important influencing operation is underway.

this Act to the case of OEF (*ibid*). While he did not specify the reason for this conclusion, the reason can be deduced from the opinion proposed by Yoneda Kenzō when he was querying the dispatch area of JSDF personnel during the operation on 18 September 2001. The difficulty regarding the JSDF's active involvement in the operation was not only mentioned by Ueda: Ōta Akihiro, a member of Kōmeitō, requested PM Koizumi to rethink the dispatching of the JSDF as follows: “we [Japan] should not provide any force to the US” (1 October, 2001). Ōta believed that Japan should not violate the JCL, and therefore should take only non-military measures.

Although the possible and legitimate JSDF activities were proposed as an issue for discussion, the Cabinet did not respond to this concern because PM Koizumi believed that the related issue should be discussed after an informal meeting of relevant Cabinet ministers (*kankei kakuryō kaigi*), which was due to be held after the Congress in the House of Councillors (2 October 2001).

Following the informal meeting of relevant Cabinet ministers, the legitimate and possible JSDF activities during the operation were discussed in the Diet. The main issue was when JSDF personnel were permitted to take military action against others. Although the JSDF would be dispatched to a “non-battle field” as PM Koizumi had stated, Cabinet members found various possibilities for JSDF personnel to be endangered.

According to the draft of the ATSMML, JSDF personnel can use military weapons

to protect their lives when unavoidable and reasonable cause exists. In Japan, such a situation is explained as legitimate self-defence (*seitō bōei*) or an act of necessity (*kinkyū hinan*). Referring to the PCJ, legitimate self-defence and act of necessity are justifiable causes for the violation of others; therefore, JSDF personnel should not take any military actions unless the offender attacks them first. On this basis, Eto Seishirō, a member of the LDP, queried whether JSDF personnel may take military action against an offender before being attacked by him or her (11 October 2001). Nakatani Gen, head of the then Japan Defence Agency, responded to the question as follows: “ATSMML allows JSDF personnel to use military weapons if the two conditions meet: first, an imminent and unlawful infringement attack may occur; and second, it is impossible to protect the lives and bodies of JSDF personnel without attacking the offender with military weapons” (11 October 2001). Nakatani continued by explaining why JSDF personnel must be armed: “we need to state the regulation to allow JSDF personnel to be armed to protect their lives and bodies” (11 October 2001).

Additionally, on 11 October 2001 at the Special Committee to enact ATSMML, Kawai Masatomo, a member of Kōmeitō, queried the difference between the Act on Cooperation with the United Nations Peace Keeping Activities and the ATSMML in relation to legitimate JSDF activities. Fukuda Yasuo, the then Chief Cabinet Secretary, responded as follows: “the ATSMML allows JSDF personnel to use military force not only to protect their lives and bodies but also to protect the lives and bodies of those who are in the camp of JSDF” (11 October 2001). Fukuda gave nine examples of persons to be protected:

patients of war; the soldiers of allies, such as the US; victims of war; medical assistants; the connector between the FJSDF and local organisations and militant groups of allies; press; translators or interpreters; and guides (11 October 2001).

As the dispatch area for JSDF personnel had already been determined, Diet members seemingly became less concerned with this issue. This may be because they had identified the Indian Ocean, Guam, and Diego Garcia as non-battlefield areas. Although the possible weapons carried during OEF were not specified in the Diet because Cabinet members did not clearly understand the situation in the field (Nakatani Gen, 10 October 2001), the seven measures proposed by PM Koizumi on 19 September 2001 were seemingly sufficient for Diet members to conclude that JSDF personnel would not use military weapons against others.

	Warships	Aircrafts
Activities	Oil Supply	N/A
	Transportation of Oil and Necessary Goods for US Army	
	Others (Providing Medical Service and Rebuilding the Destroyed Facilities)	

Figure 3-2 The Activities of JSDF Personnel during OEF

(Source: Author based on the General Plan published on 23 April 2004)

With the information in Figures 3-1 and 3-2, Diet members were satisfied with the seven measures taken in the areas identified as non-battlefields.

3.3.4. Quality and Quantity of Measures for JSDF Personnel

Although the roles of JSDF personnel were expanded, Diet members had discovered that JSDF personnel would not be dispatched to the battlefield (see Figure 3-1). The measures to be taken by JSDF personnel during the operation were mainly to support the US Army; therefore, a large number of Diet members changed their mind when they discovered that JSDF personnel would not be active in the battlefield.

Although a large number of Diet members were satisfied with the explanation given regarding the role of JSDF personnel, a member of the Japanese Communist Party (hereafter, JCP) raised the following question to PM Koizumi on this issue: “John Sidney McCain III said there is the possibility of accidental bombings. Referring to the case of the Kosovo War, the Chinese Embassy was bombed accidentally and many civilians became the victims of the Kosovo War. If Japan would provide logistical support to the US, transporting weapons and ammunitions is included in logistical support, and there is a possibility of accidental bombings using the weapons and ammunitions transported by Japan” (Fudesaka Hideyo, 10 October 2001). PM Koizumi replied as follows: “innocent civilians became the victims of 9/11; therefore, the international society must fight against terrorism [which caused the incident of 9/11]. The international society must deal with the situation of terrorism, not to deal with the situation in which civilians became the victims of international military operations. When dealing with the situation of terrorism,

the US and the UK should pay attention not to violate innocent people” (10 October 2001). No further discussion on non-violation of innocent people in Afghanistan was held in the Diet. However, the equipment to be carried by JSDF personnel during the operation was decided after the enactment of the ATSMML. The basis for the quality and quantity of equipment is unclear because no related discussions were held in the Diet; however, Figure 3-3 below demonstrates that JSDF personnel would not carry guns or other small military weapons and were only in possession of the equipment in either warships or aircrafts.

		Warships	Aircrafts
Equipment	Personnel	Max. 800	Max. 180
	Equipment	1 Supply Vessel and 2 Escort Vessels (max)	6 Transport Aircrafts and 2 Multi-Supporting Aircrafts (max)

Figure 3-3 The Equipment of JSDF Personnel During OEF

(Source: Author based on the General Plan published on 16 November 2001)

3.4. *Jus ad Bellum*

Based on discussions conducted by the GOJ in its decision-making process (see 3.3.1. and 3.3.2.), this section will examine whether the GOJ took the two normative principles, necessity and proportionality, into consideration before deciding to participate in OEF. To separately consider this issue, this section will be divided into two parts. This first part

will examine the reasons for the GOJ's decision to participate in OEF with reference to the principle of necessity in *jus ad bellum*. As states should have the right intention or a just cause for taking military action against others from the legal and moral-philosophical perspectives, the first part will examine whether the Diet found a justified reason for providing logistical support when the related discussions were held. We will then examine the permissible measures in contributing to OEF with reference to the principle of proportionality in *jus ad bellum*. As measures must be balanced to be justified from the moral-philosophical perspective, it is necessary to examine whether the Diet considered this issue when deciding to provide logistical support to the US.

3.4.1. The Principle of Necessity

As analysed in 2.2.1.i., the principle of necessity demands consideration of justification. According to jurists and philosophers' analyses on the principle of necessity in *jus ad bellum*, an operation is justified if there is a just cause; i.e. self-defence is justified when an armed attack occurs. Therefore, this subsection will first analyse whether there was a just cause for conducting OEF, and then determine whether the GOJ found the necessity to participate in the operation with just cause.

(a) Just Cause for Conducting OEF

As the US was the victim of the 9/11 attacks, OEF seems to meet the condition of the

principle of necessity (see 3.1.). Therefore, the US had the right intention in taking military action against the offender, al-Qaeda. However, although there was a clear just cause for executing defensive action, the most controversial issue was whether attacking Afghanistan was necessary. Since Afghanistan, a sovereign state, was legally distinct from al-Qaeda, the US did not have the right intention in carrying out OEF in Afghanistan. The US explained that the operation targeted Afghanistan because al-Qaeda members were hiding there. However, this rationale would only justify an operation targeting al-Qaeda members, and not the ordinary people of Afghanistan, as the violation of human rights of innocent people contravenes the normative principles of Just War Theory (Cooper, 2011). Thus, judging from the final result alone, OEF can be considered an unnecessary use of force because it was supposed to target only the members of al-Qaeda. Therefore, it is difficult to classify this operation as having a just cause.

(b) Japan's Justification for Participating in OEF

This finding demonstrates that Japan did not have the right to attack Afghanistan. The aim of this dissertation, however, is to clarify whether the GOJ's decision to participate in OEF met the principle of necessity in *jus ad bellum*. As discussions on the necessity of Japan's OEF participation were examined in 3.3.1., this part will seek to answer whether the GOJ considered the principle of necessity in *jus ad bellum* when discussing Japan's participation in the operation.

As PM Koizumi expressed his opinion that there was no right intention for Japan to participate in OEF, we may conclude that Japan did not have the right intention for its attack on Afghanistan. This also means that Japan had no right intention for providing logistical support to the US either. As seen in 3.3.1., the main reason given by Cabinet members for providing logistical support was to strengthen the relationship with the US. As examined in 1.3., this reason can be explained by the theory of IR: realism (neo-realism), liberalism (neo-liberalism), and constructivism.

For all, it is evident from the Diet record and the interview results that some Diet members pointed out that Japan had no right intention to participate in OEF from a moral-philosophical perspective. At the same time, we also discover that many Diet members favoured relying on the decision-making of others, such as the UN Security Council, the US, and other coalition allies of the US. However, the GOJ should rely neither on the UNSCR nor the decision of the US, but rather on the principle of necessity in *jus ad bellum*.

3.4.2. The Principle of Proportionality

The second consideration factor for *jus ad bellum*, the principle of proportionality, guides judgment as to whether the quality and quantity of the military power used by the JSDF for OEF was proportional. Since the JSDF did not take any military action during OEF, some pointed out that the GOJ did not have to consider the principle of proportionality in

jus ad bellum. However, the GOJ should have considered the proportionality of the support provided to the US with reference to the principle of proportionality in *jus ad bellum*. To judge proportionality, this subsection will examine whether or not OEF fell within the scope of self-defence by comparing the norm and practice, before examining the issue through Japan's participation in OEF.

(a) Quality and Quantity of OEF

It has been reported that approximately 26,270 civilians⁷ became casualties of OEF. Thus, the number of innocent civilians killed far exceeded the number of victims of 9/11 (see 3.1.). Human life is uncountable, however; therefore, the number of victims is not the only way to judge whether the quality and quantity of OEF was justified. The length of the war is also an important factor in determining an answer to this question. Given that US military personnel remain in Afghanistan today (see 3.1.), the US military has been in the country for more than fifteen years. Evidently, OEF became a larger operation than was supposedly originally intended.

(b) Quality and Quantity of JSDF Personnel

With the number of victims and the length of OEF, this dissertation examines whether the

⁷ According to Crawford (2015), 26,270 civilians were killed and 29,900 injured in the 2001 Afghanistan War. With other factors causing civilian deaths, e.g. unsafe environment, approximately 92,000 civilians in total suffered from the violence of war.

GOJ determined the quality and quantity of JSDF personnel focusing on the balance between 9/11 and OEF.

Based on this analysis, this dissertation concludes that Cabinet members did not sufficiently consider the principle of proportionality in *jus ad bellum* because the quality and quantity of force used was explained merely with the words “minimum and only necessary use of force;” however, the meaning of “minimum and only necessary use of force” is seemingly not shared among Diet members (interview with a then DPJ member of the House of Councillors, 6 July 2015). This leads to the result that Diet members used the words of “minimum and necessary use of force” like a mantra so that they can pretend to be conscious of quality and quantity in operation. Although they did demonstrate some consciousness of the issue, the dialogues in the Diet and the interview results demonstrate that Diet members did not pay attention to the principle of proportionality in *jus ad bellum* when deciding to participate in OEF: participating in OEF to strengthen the relationship with the US was more important than paying attention to the quality and quantity of the operation.

3.5. *Jus in bello*

The debates in the Diet were not only related to the issues of *jus ad bellum*. Since the GOJ discussed the JSDF’s activities, another aspect with which to judge whether Japan followed the moral-philosophical theories of just war is to analyse whether the GOJ paid

attention to the principles of *jus in bello*. Therefore, to answer the research question of this dissertation, this section will examine whether the GOJ considered each of these principles. To develop these two examinations based on the normative principles of *jus in bello*, the discussions in the Diet and the results of interviews conducted as part of this dissertation (see Appendix) will be referenced.

Following the description of the principles of *jus in bello*, this section will be divided into two parts: to analyse the permissible JSDF measures during OEF, we will first apply the principle of necessity and then the principle of proportionality. This will allow us to identify whether the GOJ considered the JSDF's role in conducting the operation. To develop these two examinations based on the normative principles of *jus in bello*, the discussions in the Diet considered in earlier sections, particularly 3.3.3. and 3.3.4., will be referenced.

3. 5. 1. The Principle of Necessity

The principle of necessity in *jus in bello* required the government to consider in what situations JSDF personnel could use military power, so as to minimise the numbers of victims. Therefore, applying this principle will help to establish whether the GOJ clarified in what situations JSDF personnel could exercise military power. The normative principle provides that soldiers should not exercise any kinds of military power against their enemies except in emergencies, e.g. where their lives are threatened. We will first define

the areas to which JSDF personnel were dispatched in conducting the operation, to ascertain the degree to which their lives were threatened during the operation. By defining the situation faced by the JSDF, we can ascertain whether it was necessary for JSDF personnel to be armed. Having clarified the dispatch area, we will then evaluate whether the GOJ considered in what situations JSDF personnel would be permitted to use military weapons. By examining these two issues, we can ascertain whether the GOJ considered the principle of necessity in *jus in bello*.

According to the dialogues in the Diet, Cabinet members considered the situation in which JSDF personnel may use military force, such as firing weapons, in emergency cases. Expanding the capability of JSDF personnel in operations, Cabinet members believed it possible for Japan to be active during the operation.

According to the discussion in the Diet, JSDF personnel may use military force against their enemies to protect the lives and bodies of their collaborators and themselves. This differs seemingly from legitimate self-defence and acts of necessity, as stated by the PCJ; however, the GOJ sufficient clarified the situations in which JSDF personnel may use military force against others. Hence, it is possible to conclude that the GOJ considered the principle of necessity in *jus in bello* when enacting the ATSMML.

Seemingly the GOJ sufficient paid attention to the principle of necessity in *jus in bello*, this chapter points out the necessity of the GOJ to further consider this normative

principle: the GOJ should have considered not only the lives and bodies of their collaborators and themselves but also those of civilians in Afghanistan to fit with the principle of necessity in *jus in bello*. The lack of consideration on violating innocent people demonstrates that the GOJ insufficiently considered the principle of necessity in *jus in bello*: not considering on this point might be due to the confidence that JSDF personnel would not use military weapons against innocent people because they would be dispatched in non-battle fields; however, the normative principles of Just War Theory are based on the idea that all states should paying attention not to violate the rights of civilians before participating in international military operations. Overall, this chapter points out that the GOJ did not sufficiently consider the non-violation of human rights in general, particularly the rights of civilians in Afghanistan.

3. 5. 2. The Principle of Proportionality

The second principle, proportionality, guides us as to whether the quality and quantity of military power used by soldiers during an operation is proportional. Since JSDF personnel did not participate directly in OEF, it might be difficult to calculate how much military power they would use in this operation. However, it is possible to consider, for instance, whether the volume of oil that the JSDF transported to US aircraft was proportional.

As examined in 3.3.3. and 3.3.4., no discussions were held in the Diet regarding how much oil the JSDF would transport to US aircraft. Since the main discussion in the

Diet concerns compliance with the restrictions imposed by the JCL, the focus of debate was domestic legal matters.

The possibility of JSDF personnel using military force was mentioned in the Diet; however, the quality and quantity of military weapons were not mentioned when members were discussing the issue of legitimate JSDF activities in OEF. While the words “minimum and only necessary use of force” were heard many times in the Diet, the quality and quantity of military force to be used were not made sufficiently clear. Overall, we can conclude that the GOJ did not sufficiently consider the principle of proportionality in *jus in bello*.

3.6. Conclusion

From the discussion in this chapter, it is clear that, in deciding whether or not to participate in OEF, the GOJ’s consideration differed from the normative principles that all members of international society should follow when contemplating the use of military power. Although Japan did not participate directly in this operation, JSDF troops transported oil to refuel US aircrafts. Therefore, rather than focusing solely on legal matters, the GOJ should have considered moral-philosophical perspectives to properly justify Japan’s participation in OEF. Therefore, this section will summarise the gap between the GOJ consideration and the factors that all sovereign states should consider before launching or participating in international military operations. This will help to clarify the normative

perspectives to which the GOJ paid insufficient attention.

To identify the gap, it is necessary to highlight the principal reason behind the GOJ's policy: contrary to PM Koizumi's declaration that this participation would contribute to maintaining international peace and security, the most likely reason for participation was to strengthen Japan's relationship with the US. Two grounds support this conclusion: first, Japan's consideration of participation in OEF focused solely on Japanese domestic law, despite the contemplated military operation being international; and second, the GOJ failed to consider the protection of human rights in general. By clarifying these two explanations, which characterise Japan's intention to participate in OEF, we can identify the gap between factors considered by the GOJ and the normative principles applied to participating in international military operations.

The first characteristic was the lack of consideration given to the justification for OEF. Although some Diet members raised the necessity to consider this issue before deciding to participate in the operation, the Japanese Cabinet did not address this point clearly: instead, they focused on responding to the US's request to participate in OEF rather than clarifying the right intention for attacking Afghanistan. In addition, discussions on enacting the ATSMML addressed concerns over how Japan would participate in OEF without revising the JCL. From our analysis of the related Diet discussions, it is clear that no consideration was given to the moral justification for OEF. The most important factor for the GOJ was to strengthen the US-Japan relationship, as

Asō specified in the Diet (see 3.3.1.). The gap between the factors considered by Japan in this instance and the normative factors demonstrates that the GOJ did not consider the moral-philosophical perspective.

The second characteristic of the GOJ's decision-making procedure was the lack of consideration regarding the protection of human rights in general. The GOJ focused in particular on protecting the lives of JSDF personnel, contrary to the normative principles that states should not violate human rights in general. As seen in 3.3.3., the Diet discussion concerned not violating the lives and bodies of JSDF personnel and the collaborators and complying with the JCL restriction. If the OEF participation was premised on maintaining international peace and security, the GOJ should have considered the protection of human rights in general, particularly the rights of civilians in Afghanistan. However, no such discussion took place in the Diet when the issue of participating in OEF was discussed. Thus, in reaching the decision to participate, the GOJ seems not to have paid sufficient attention to the normative ideas of Just War Theory.

Since OEF was the first case of the GOJ deciding to participate in an international military operation, it might be argued that they lacked sufficient knowledge regarding the theory. Therefore, the next chapter will analyse another case in which the GOJ decided to participate in international military operations. This will clarify whether the GOJ improved its consideration of the normative principles of Just War Theory in the second case.

Chapter Four. Japan's Participation in OIF: the 2003 Iraq War

This chapter will examine the GOJ's decision-making process in deciding to participate in Operation Iraqi Freedom (OIF), also known as the 2003 Iraq War (2003 - present). This is the second case of international military operations in which Japan participated. This chapter uses the term OIF, as this encompasses the 2003 invasion of Iraq (20 March 2003 - 1 May 2003) and the post-invasion reconstruction operation (2003 - present). When the GOJ decided to participate in OIF on 1 August 2003, the 2003 invasion of Iraq was already completed. Although the GOJ was unable to reach a decision on participating in the 2003 invasion, related discussions continued with respect to participating in the reconstruction activity. Therefore, Japan's participation in OIF is suited to the second examination as to whether Japan took the normative principles into consideration when deciding to participate in international military operations.

This chapter will commence by introducing the background of OIF. Compared with the previous case study of OEF, the purpose of OIF was more complex because there was no clear rationale for invading Iraq. Therefore, it is necessary to clarify what prompted the US and its coalition allies, such as the UK, to invade Iraq and to conduct reconstruction activity there. By elucidating the reasons for each, we will clarify the rationale for OIF.

After completing the invasion of Iraq on 1 May 2003, the US and its coalition

allies engaged in reconstruction activity there. The GOJ had been unable to reach a decision on participating in the 2003 invasion before this operation concluded, despite Japanese Cabinet members, particularly PM Koizumi insisting that JSDF personnel should be dispatched to support the US military. Therefore, the second section will analyse why members of the Koizumi administration, in particular, sought to participate in OIF.

Based on the background of OIF and Japan's intention to participate therein, the related debates in the Diet will be analysed. To facilitate comparison with the previous chapter, the same issues as those in Chapter Three will be investigated: whether Diet members found the right intention for participating in OIF (4.3.1.); whether the OIF was proportional to Iraq's supposed possession of WMDs (4.3.2.); what the role of JSDF personnel was while reconstructing Iraq (4.3.3.); and whether the measures taken by JSDF personnel in the reconstruction of Iraq were proportional (4.3.4.).

Based on the results of analyses, the examinations will explore compliance with *jus ad bellum* (4.4.) and *jus post bellum* (4.5.). As specified in Chapter Two, the principles of *jus ad bellum* and *jus in bello* should be considered when determining participation in OIF as these principles demonstrate what requirements it is necessary to justify before taking military action and supporting reconstruction activity. However, the GOJ could not reach a decision to participate in OIF before the invasion was completed, it was unnecessary to consider the normative principles of *jus in bello*. Despite considering the

normative principles of *jus in bello*, the GOJ should have considered the normative principles of *jus ad bellum* as the GOJ originally contemplated participating in the invasion of Iraq. Furthermore, the principles of *jus post bellum* should have been taken into consideration as the GOJ determined to participate in the reconstruction activities in Iraq. Therefore, this chapter will examine whether the GOJ considered the normative principles of *jus ad bellum* and *jus post bellum* by comparing what issues were actually discussed by the GOJ and what issues they should have considered.

In the final section of this chapter, we will clarify what issues the GOJ, particularly the Koizumi administration, should have considered when deciding to participate in the 2003 invasion of Iraq and to dispatch the JSDF to participate in the reconstruction activity.

4.1. Background to Operation Iraqi Freedom

As mentioned in the introduction, OIF comprised two different types of activity: the invasion of Iraq and reconstruction work. Therefore, this section will be divided into two parts to describe why the US and its coalition allies conducted these two activities.

4.1.1. The 2003 Invasion of Iraq

In essence, the US government believed that the then-Iraqi government, the Hussein

administration (term of office: 16 July 1979 – 9 April 2003), posed a threat to international society. Two significant grounds were provided in support of the US opinion: first, the US believed there was a close relationship between Saddam Hussein and al-Qaeda; and second, the US presented evidence that Iraq possesses weapons of mass destruction (WMDs).

The first US argument to justify invading Iraq was the discovery that Saddam Hussein had been supporting Islamic extremist groups, such as al-Qaeda, both financially and physically (Rice, 2012, p. 169). Consequently, the US identified Saddam Hussein, the fifth President of Iraq, as a threat to international peace and order (Rumsfeld, 2011, pp. 421–422). In reaching its decision to carry out OEF in order to destroy al-Qaeda, the US expressed its concern that Saddam Hussein might provide financial and physical support to other Islamic extremist groups as he had done to al-Qaeda, to fight against the US. In other words, the US worried that major attacks, like 9/11, might be repeated by Islamic extremist groups, despite US efforts to destroy al-Qaeda. Therefore, the US believed it necessary to invade Iraq in order to destroy Saddam Hussein's relationship with Islamic extremist groups.

The second reason for the US invasion of Iraq was the concern that Iraq possessed WMDs. After 9/11, two anthrax attacks occurred in the US (CNN, 2010). Since anthrax is categorised as a biological weapon, the US suspected that further attacks using WMDs might occur in the US. A concern over anthrax and/or WMD attacks was specified

as follows in the 2002 Bush Doctrine: “[o]ur second goal is to prevent regimes that sponsor terror from threatening America or our friends and allies with weapons of mass destruction” (Bush, 2002a). This speech clearly demonstrates the US’s evidently fear of being attacked with WMDs. In another occasion, President Bush delivered a similar speech specifying the US’s suspicion that Iraq possessed WMDs, and was exporting the weapons to Islamic extremist groups (Bush, 2002b). These reports delivered by US intelligence was sufficient for the US to identify the Iraqi government, particularly Saddam Hussein, as a menace. Hussein was therefore regarded as a serious threat to the US. At the same time, the US government had strong concerns that Iraq was developing nuclear weapons (Powell, 2003). Although it was unclear whether Iraq possessed nuclear weapons, some US Cabinet members, such as Dick Cheney, a former Vice President of the US, assumed that Saddam Hussein was endeavouring to develop “an aggressive nuclear weapons program” (Woodward, 2004, p. 165). Overall, the US was clearly very concerned about both the Iraqi government and Islamic extremist groups.

Based on these reasons, President Bush made a speech at the UN General Assembly on the necessity to conduct an inspection in Iraq (Bush, 2002c). Following his speech, the issue of Iraq was discussed at the UN Security Council, which was adopted as resolution 1441 (hereafter, UNSCR 1441) on 8 November 2002. Although the UN Security Council “*decide[d] to remain seized of the matter*” (Resolution 1441, 2002) , the US was not satisfied with the resolution and expressed concern that the Hussein administration might provide financial and physical support to Islamic extremist groups

(Bush, 2003). Given this suspicion, the US insisted on its right intention for attacking Iraq, so as to maintain peace and order in international society. This opinion was supported by several sovereign states, including Australia, Spain, Japan, the Netherlands, Denmark, Poland, and the UK (Bush, 2010, p. 233), although Austria, Belgium, France, Germany, Norway, and Russia disagreed, believing that UNSCR 1441 was sufficient to solve the issues regarding Iraq (BBC, 2003).

4.1.2. The Reconstruction of Iraq

Pursuant to the US intention to destroy the Hussein administration, the 2003 invasion of Iraq began on 20 March 2003. The invasion itself was swiftly completed, with President Bush declaring the end of the invasion on 1 May 2003 (CNN, 2003). After the Iraqi government collapsed and Saddam Hussein was captured by the US force on 13 December 2003, the US Office for Reconstruction and Humanitarian Assistance (ORHA) occupied Iraq to oversee its reconstruction. Later, the Coalition Provisional Authority (CPA), organised by the US, UK, Australia, and Poland, was established on 16 May 2003 to replace the ORHA, and served in a substitute role for Iraq until the Iraqi Interim Government was established⁸.

Even after the establishment of the Iraqi Interim Government, the situation in

⁸ The Iraqi Interim Government was instituted until a new Iraqi government, the Iraqi Transitional Government, was established on 3 May 2005.

Iraq was not sufficiently stable for the US and its coalition allies to withdraw their occupation force. According to a report from *The Guardian*, between 20 March 2003 and 31 December 2010, Iraq suffered more than 1,000 suicide bomb attacks, which killed 12,284 Iraqi civilians and injured a further 30,000 (Boseley, 2011). Thus, despite the US declaration that the invasion had concluded, large numbers of Iraqi civilians became victims of OIF. Of course, the victims of OIF were not only Iraqi residents: approximately 1,000 US soldiers were killed and 6,497 were injured (Weeramantry, 2005, p. xv), while 13,500 - 45,000 Iraqi soldiers died during the operation (Steele, 2003). Three Japanese people also became the victims of OIF: two Japanese diplomats shot in Iraq on 29 November 2003; and Japanese civilian found dead in Iraq on 31 October 2004 (*Asahi Shimbun*, 2004; Koizumi Junichirō, 2004) . Based on the above, OIF reconstruction activity was undertaken under such highly unstable conditions.

4.2. Purpose of Enacting a Temporary Statute, Special Measures on Humanitarian and Reconstruction Assistance in Iraq

When the US decided to destroy the Hussein administration, the GOJ supported the US's stance, as it had before OEF was carried out (see Chapter Three.). PM Koizumi expressed his position as follows: "I deem it appropriate to support the use of force by the US" (Koizumi, 2003a). The GOJ, however, had to shift its discussions from supporting invasion activity to supporting reconstruction activity, as the invasion was completed before the GOJ had reached a decision on participation. Although Japan had to shift the

type of support it offered, the Cabinet's intention to support the US remained stable. Therefore, this section will introduce the intention of the Cabinet to clarify why JSDF personnel were dispatched.

The Japanese international policy on participating in reconstruction activity in Iraq was expressed in the following statement of PM Koizumi: "the reconstruction of Iraq and stability of the livelihoods of people in Iraq is of importance for Japan from the perspective of not only stability in the Middle East region but also peace and safety in the international community as a whole, including Japan" (Koizumi Junichirō, 2003b). This statement manifests a strong intention to dispatch the JSDF to Iraq in order to maintain international peace and security. However, it can also be identified that the policy's purpose was to strengthen the relationship with the US (see 1.3.). This became apparent at an earlier stage on discussions in the Diet, when Japan offered to supply oil to the US military without enacting a suitable statute. At that time, the GOJ had no legal legitimacy for refuelling the US naval fleets engaged in OIF; therefore, it was necessary to enact a new statute for Japan to dispatch JSDF personnel to participate in OIF for the following two reasons: first, the difficulty of applying the ATSMML to a different international military operation; and second, the difficulty of applying the 1999 Surrounding Areas Emergency Measures Law and the Act on Cooperation with the United Nations Peace Keeping Activities to participation in OIF (see 3.2.). Although required for Japan before dispatching the JSDF, the GOJ decided to provide such support to the US by applying the ATSMML (Ito, 2003). It could be said that the

governmental decision was a holding step towards the government's intended dispatch of the JSDF to participate in OIF.

Although Japan first dispatched the JSDF to refuel the US naval fleets engaged in OIF, it was necessary to enact a new temporary statute to legitimate Japan's participation in OIF. Therefore, the bill of Special Measures on Humanitarian Reconstruction Assistance in Iraq (SMHRA) was brought to the floor of the Diet on 13 June 2003 (*Japanese Communist Party*, 14 June 2003).

4.3. Diet Deliberation

With the intention of the Koizumi administration, discussions were held in the Diet on how to provide support to the US military. This section will analyse how Diet members held debates on Japan's participation in OIF when determining to enact the SMHRA, by focusing on whether Diet members pointed out the related issues: the right intention or a just cause for engaging in OIF (4.3.1.); the quality and quantity of military weapons used during OIF (4.3.2.); whether it was necessary to participate in reconstruction activity (4.3.3.); and the quality and quantity of measures which JSDF personnel would take during the reconstruction activity (4.3.4.). This analysis will be based on Japanese Diet records⁹ provided by the National Diet Library, interviews conducted for this dissertation

⁹ Although the bill of SMHRA was brought to the floor on 25 June 2003, the related debates, particularly on the US conducting OIF, were held in the Diet from 8 November 2002. Therefore, this chapter focuses on the discussion in the Diet between 8 November

(see Appendix), and the general plan published by the Cabinet on 9 December 2003.

4. 3. 1. The Reasons for Participating in OIF

Before discussing this issue in the Diet, PM Koizumi made a speech justifying the invasion of Iraq on 20 March 2003, stating two clear reasons: first, Iraq ignored UN warnings; and second, the operation was required in order to liberate Iraqi civilians from Saddam Hussein (Koizumi, 2003b). PM Koizumi explained the first reason for invading Iraq as follows: although WMDs were not used in 9/11, Iraq's possession of WMDs would threaten the lives of people throughout the world (*ibid*). The second reason was as follows: liberating Iraqi public from the Hussein administration would help Iraq to become a democratic society (*ibid*). Although PM Koizumi pointed out the reasons for supporting the US, the reasons for providing logistical support to the US were not mentioned in the Diet.

The related discussion on the legal justification for attacking Iraq commenced after the adoption of UNSCR 1441. The foreign affairs committee in the House of Representatives held a meeting on the Iraq investigation on 15 November 2002. They invited three unsworn witnesses to the Diet: Ōno Motohiro¹⁰, Matsui Yoshirō, and Mizuguchi Akira. Ōno specified the threats posed by Iraq from the US perspective (see

2002 and 26 July 2003, the date of passing the bill of the SMHRA.

¹⁰ Ōno Motohiro was an officer working in MOFA (1989-2001). He was dispatched to Iraq and UEA from 1989 to 1993.

4.1.), but insisted that there was no evidence to support the US's opinion on Iraq (15 November 2002). At the same time, he pointed out that there was less possibility for Saddam Hussein to order missiles or WMDs to be launched because it would be difficult for him to control the Iraqi government if he gave such order (*ibid*). Matsui, a scholar in public international law, pointed out the legal perspectives: although Iraq possessed weapons that should be abolished under UNSCR 678 and 687, UN members may not have the right to exercise self-defence (*ibid*). Another meeting was held on 26 November 2003 with three unsworn witnesses: Magosaki Ukeru, a diplomat, Yamauchi Masayuki, a scholars specialised in IR, and Yokota Yōzō, a scholar specialised in public international law. During this meeting, Yokota mentioned that there was no legal justification for the US to exercise the right to self-defence (26 November 2002). Although these scholars in public international law noted the lack of legal justification for conducting the 2003 invasion of Iraq, Kawaguchi Junko, the then Minister of Foreign Affairs, stated as follows: "Iraq has not observed the UNSCR; therefore, [we] cannot legitimate the act of Iraq" (27 February 2003).

Discussion on the legitimacy of attacking Iraq continued after the US commenced the 2003 invasion of Iraq. When Hironaka Wakako, a then DPJ member, asked PM Koizumi about the legitimacy of attacking Iraq, he responded that the legal basis for the operation was UN Resolution 678 (21 March 2003). He explained the reason as follows: "Iraq has not cooperated [with the UN] to discharge the obligation; therefore, Iraq has violated the stipulation in UNSCR 1441. Also, there is a significant violation of

UNSCR 687, a ceasefire resolution between Iraq and Kuwait and member states cooperating with Kuwait; therefore, the basis of [the 2003 invasion of Iraq] is UNSCR 687. For all, attacking Iraq is not identified as either a pre-emptive attack nor preventive attack” (21 March 2003). It was not only PM Koizumi who found the legal basis in the UNSCR: the then Chief Cabinet Secretary, Fukuda Yasuo, also referred to the UNSCR to explain the legitimacy for attacking Iraq (25 March 2003). On the other hand, Kawaguchi Junko specified that the legal basis for the 2003 invasion of Iraq was Chapter 7 of the UN Charter (*ibid*); however, when an opposition party member asked for the specific regulation, a then director of the International Legal Affairs Division in MOFA was unable to specify the exact regulation that was applicable (Hayashi Keiichi, 25 March 2003).

Despite the Cabinet’s professions that the attack on Iraq was legitimate, 23 Japanese scholars in public international law, including Matsui Yoshirō, Mogami Toshiki, Igarashi Masahiro, and Furukawa Terumi, issued a statement that there was no legal justification for attacking Iraq (*Japanese Communist Party*, 19 March 2003). Although the invasion was illegal from the perspective of public international law on war, the LDP members, particularly Cabinet members, believed that the UNSCR was sufficient legal justification for the invasion.

While the lack of legal justification was one of the issues discussed in the Diet, Maehara Seiji, a then DPJ member, pointed out that the necessity of considering the issue

from the perspective of domestic law rather than public international law on war because Article 98 of the JCL states “the treaties concluded by Japan and established laws of nations shall be faithfully observed.” Maehara believed that Japan’s position supporting the invasion of Iraq by the US and its allies contravened Articles 98 and 99 of the JCL (20 March 2003).

Furthermore, opposition party members emphasised that Japan’s provision of logistical support to the US contravened Article 9 of the JCL (Ōide Akira, 20 March 2003; Haruna Naoaki, 12 December 2002; Shima Satoshi, 30 January 2003). The LDP members, however, insisted on the necessity to resolve the issue on Iraq due to the possibility that Japanese civilians would be attacked with the weapons transported by Iraq (Nakagawa Shōichi, 30 January 2003; Sengoku Yoshito, 20 March 2003). Thus, Cabinet members found legitimacy in participating in OIF, to prevent the possibility of Japanese civilians being attacked.

4. 3. 2. Quality and Quantity of OIF

This issue concerns whether the GOJ sufficiently considered whether the quantity and quality of the operation to invade Iraq was proportional to the threat posed by Iraq to international society. Focusing on this issue may elucidate the degree of support Japan should have provided to the US military and the related discussion will be analysed on that basis.

With respect to the US engaging in international military operations, the possibility of violating human rights in general was a main concern of Diet members. For instance, four days after UNSCR 1441 was adopted, a then DPJ member pointed out the necessity to consider the human rights of victims (Kawahashi Sachiko, 12 November 2002). Despite Kawahashi's insistence, the Cabinet members to whom the query was addressed did not reply to this comment: he only responded to other issues, such as the restoration of diplomatic relations with North Korea (Fukuda Yasuo, 12 November 2002). A similar question was raised by members of the opposition parties before the invasion of Iraq (Kaneko Tetsuo, 30 January 2003; Doi Takako, 4 February 2003; Ichida Tadayoshi, 5 February 2003; Hayashi Toshiko, 17 March 2003; and Kamimoto Mieko, 19 March 2003). Although the opposition party members had been conscious of potential violation of the rights of Iraqi people if the US invaded Iraq, Cabinet members emphasised the importance of maintaining the relationship with the US rather than urging the US not to violate human rights (Koizumi Junichirō, 4 February 2003 and 5 February 2003). During the earlier operation, Cabinet members avoided responding to questions on human rights violation by stating that they did not know what the US's tactics would be; however, after 20 March 2003, the day on which the US began invading Iraq, they had to respond to this issue and PM Koizumi commented as follows: "I sincerely hope that the battle in Iraq will be terminated as soon as possible, and human and physical damage will be as little as possible" (21 March 2003). However, PM Koizumi also pointed out that the damage caused by passing on WMDs to dangerous dictators or terrorists would be unexpectedly

overwhelming (24 March 2003). In this regard, all Cabinet members found the quality and quantity of OIF to be balanced with the threats posed by Iraqi WMDs.

4. 3. 3. Participation in Reconstruction Activity

According to public international law, Japan was required to obtain permission from Iraq to participate in its reconstruction activity (see 2.2.3.i). However, the Iraqi government collapsed in April 2003 and therefore could not make such a request to Japan. As a substitute for the Iraqi government, the US and the UK were given the authority, responsibility, and obligation to govern Iraq (UNSCR 1483). Thus, Japan was required to obtain a request from these countries to provide logistical support in the reconstruction activity. Some claimed that the request should have been made by the CPA as the acting substitute for the Iraqi government (Musashi, 2005, p. 107). In any case, when asked about this issue, a Cabinet member responded that there had been no official request from the US to dispatch JSDF personnel to Iraq (Kawaguchi Junko, 13 June 2003). PM Koizumi also replied that providing support to reconstruct Iraq, including dispatching JSDF personnel, was Japan's decision; and not simply in response to a request from the US (7 July 2003). Although no official request was made by the US, the GOJ believed that there had been a request from the US because Paul Dundes Wolfowitz, the then US Deputy Secretary of Defense, expressed his opinion that Japan would provide logistical support to the US, such as maintaining facilities and providing communication and transport services (Nishida Tsuneo, 2 July 2003). On this basis, the GOJ found it

necessary to participate in reconstruction activity.

4. 3. 4. Quality and Quantity of Measures for JSDF Personnel during the Reconstruction Activity

Before bringing the SMHRA bill to the floor of the Diet, PM Koizumi announced that Japan would implement eight measures to deal with Iraq: taking the necessary measures to protect the lives of Japanese civilians in Iraq; strengthening the security of important facilities in Japan, i.e. the facilities of the US military and other official residences; taking the necessary measures to maintain the safety of ship navigations; taking suitable economic measures; providing humanitarian assistance to the victims; providing support to Iraq and surrounding countries to relieve the economic influence; taking the necessary measures to destroy WMDs and mines under the sea; and finally, continuing to provide support under the regulations of the ATSMML (The Cabinet Decision, 20 March 2003). Although the eight measures reflected the intention of PM Koizumi, Diet members had to consider the dispatch area for the JSDF. There had been a surge in the number of military attacks, including suicide bombings, in Iraq since President Bush declared the conclusion of the 2003 invasion on 1 May 2003 (see 4.1.). Due to the unstable situation in Iraq, the GOJ had to determine the dispatch area because the government was afraid of sending JSDF personnel to a battle zone because the JCL prohibits retaining war potential (see 1.2.).

To determine the situation, the GOJ had to distinguish between combat zones and non-combat zones in Iraq. Questions related to the definition of combat zone and non-combat zone were frequently raised in the Diet (Shimba Kazuya, 3 June 2003; Tsuzuki Tsuzuru, 5 June 2003; Doi Takako, 11 June 2003; Suematsu Yoshinori, 12 June 2003; Kokuta Keiji, 17 June 2003; and Nakagawa Masaharu, Ichikawa Yasuo, Kijima Hideo, and Kaneko Tetsuo, 24 June 2003); however, Cabinet members, particularly the then Chief Cabinet Secretary Fukuda Yasuo, defined a combat zone as a place where “an international armed conflict of killing or injuring a person, or destroying an object” is ongoing (26 June 2003). He continued by stating that the GOJ would determine whether an area was a combat zone or non-combat zone based on the information provided by the Japanese alliance, comprising the US (*ibid*). A member of the Iraqi investigation team added the following to Fukuda’s comment: “according to my experience of staying in Iraq, (...) I believe it is possible to divide the area in Iraq into battle field and non-battle field” (Saitō Tetsuo, 26 June 2003). Cabinet members implied that a non-combat zone was anywhere hostile activities were not occurring; however, Diet members, including the ruling party members, were not satisfied with the response due to the unstable situation in Iraq and, eventually, PM Koizumi responded: “I do not know where the battle field is and where the non-battle field is” (23 July 2003).

Although innumerable discussions on defining non-battle fields were held in the Diet, the SMHRA bill was passed on 26 July 2003. Based on the bill, the Cabinet submitted a general plan on the measures based on the SMHRA on 9 December 2003.

This was in response to the fact that Article 4 of the SMHRA specifies that if a PM should find it necessary, countermeasures and response measures should be implemented and a basic plan made concerning such response measures at the Cabinet meeting. According to the general plan, the dispatch area for JSDF personnel would be determined by the roles they played during the operation (see Figure 4-1). According to the general plan, the participation activities during OIF are divided into two categories: humanitarian aid activity and safety support activity. The former would be undertaken by JSDF personnel and assistant staff for Iraqi reconstruction, while the latter would be conducted solely by JSDF personnel. Compared to the eight measures announced by PM Koizumi on 20 March 2003, providing humanitarian assistance to victims is categorised as medical treatment service in humanitarian aid activities. Other measures that PM Koizumi insisted JSDF personnel should take, such as adopting the necessary measures to maintain the safety of ship navigations and to destroy WMDs and mines under the sea, were not mentioned in the general plan submitted.

Humanitarian Aid Activities in Iraq	JSDF Personnel	Reconstruct and Maintain Medical Service, Water Supply Service, and Public Service		Muthanna Government
		Transport Resources for Humanitarian Aid Activities	By Vehicle	Muthanna Government
			By Warship	Indian Ocean
			By Air	Airport Facilities in Kuwait and Iraq
	Assistant Staff for Iraq Reconstruction	Medical Service		Iraq
		Public Service		Iraq
		Water Utilisation		Muthanna Government
Safety Support Activities for UN Members	JSDF Personnel	Medical Service, Transportation Service, Storage, Communication Service, Construction, Repair Service or Maintenance Service, Supply Service, and Disinfection Service		Iraq

Figure 4-1 The Dispatched Area of JSDF Personnel during the OIF

(Source: author based on the general plan published on 9 December 2003.)

Regarding the dispatch area for JSDF personnel and assistant staff for Iraqi reconstruction, the general plan specified “the area where the act of hostilities would not take place during the operation” (The Cabinet, 9 December 2003). The general plan also specified that JSDF personnel who were



Figure 4-2 Map of Iraq

(Source: BBC News on 19 February 2004)

involved in humanitarian aid activity may have access to the facilities of CPA, the countries surrounding Iraq, and countries on the coast of the Persian Gulf, to collect necessary information; however, the JSDF would be mainly active in Samawah, Muthanna Government (*ibid*). The area of activity for JSDF personnel obviated the necessity for them to be armed or to take the same measures as in OEF (see Figure 3-3). However, the Cabinet decision on the quality and quantity of measures for JSDF personnel during the reconstruction activity was massive compared to the JSDF activity during OIF (see Figure 4-3). This was because the situation in Iraq was too unstable (see 4.1.) for JSDF personnel to undertake reconstruction activity without carrying military weapons. To protect them from danger, the Diet insisted on the necessity for them to carry weapons, e.g. guns, while participating in the operation (Shiina Kazuyasu, 27 May 2003). Due to the unstable situation in Iraq, an ordinance was required for JSDF personnel. As Article 17 of the SMHRA specifies, the Cabinet needed to set the kinds and amount of ordinance in the general plan submitted on 9 December 2003 (see Figure 4-3).

	Personnel	Facilities	Equipment
Ground SDF	Max. 600	Max. 200 Vehicles (Bulldozers, Armed Personnel Carrier, and Light Armed Vehicle)	Guns, Rifles, Machine Guns, Carl Gustaf, and Anti-tank Weapons
Air SDF	(Depends on Military Units)	Max. 8 Aircraft	Guns, Rifles, and Machine Guns
Maritime SDF	(Depends on Military Units)	Max. 2 Warships and Max. 2 Escort Flotillas	-

Figure 4-3 The Equipment for JSDF Personnel to Carry during the OIF

(Source: Author based on the General Plan published on 9 December 2003)

Figure 4-3 shows that the Cabinet planned for JSDF personnel to carry military weapons with them. The Act on Cooperation with the United Nations Peace Keeping Activities also allows JSDF personnel to carry military weapons; however, they are only permitted to hold light weapons (Article 23-5). Compared to the JSDF personnel involved in PKO operations, those in OIF were heavily armed. The same conclusion could be arrived at by comparing the equipment carried by JSDF personnel during OIF and OEF (see Figure 3-3). From the list of equipment of JSDF personnel, it is clear that Cabinet members were aware that they were dispatching JSDF personnel to a dangerous area in Iraq, which necessitated the carrying of massive arms.

4.4. *Jus ad Bellum*

Based on the analyses of Diet reports on the four different topics that should have been considered by Diet members, this chapter will now examine whether the GOJ took the normative principles of Just War Theory into consideration. The SMHRA was enacted after the declared conclusion of the invasion of Iraq, and some might therefore say that Japan did not need to consider about the principles of *jus ad bellum*. However, Japan should considered these principles because it had the opportunity to provide logistical support to the US military and this should have been legitimated. The main argument, therefore, is whether Japan's decision to provide logistical support to the US military met the principles of *jus ad bellum*.

The first issue is whether the GOJ considered the principle of necessity when deciding to provide logistical support to the US military. As Japan decided to participate in OIF to support the US, the first examination will focus on why the GOJ believed it necessary for Japan to participate in the 2003 invasion of Iraq. The second examination concerns whether the invasion of Iraq was proportional in terms of military power. The 2003 invasion was executed by the US and its coalition allies because they identified Iraq as a threat to international peace and order. Even if they had the right intention for conducting OIF, the operation would be unjustified if the quality and quantity of weapons used was disproportionately large. The principle of proportionality, therefore, provides

certain criteria regarding whether the military power used by the US and its coalition allies in Iraq was balanced. We can also evaluate whether the GOJ took the principle of proportionality into consideration when deciding to provide logistical support to the US: if Japan believed that the quality and quantity of military power already committed to the operation was sufficient, it could be concluded that Japan did not have to provide logistical support to the US military. As Japan did decide to provide such support, it should have believed that the quality and quantity of military power committed to the operation was inadequate to tackle the threat posed by the Hussein administration. Therefore, it is important to examine whether the GOJ took the principle of proportionality into consideration when deciding to provide logistical support to the US military during the 2003 invasion of Iraq.

4.4.1. The Principle of Necessity

As seen in 4.1., the 2003 invasion of Iraq was not an act of self-defence because Iraq did not attack any UN members. It is legitimate to exercise self-defence when attacked by others (see Chapter Two); therefore, it is difficult to define the 2003 invasion as legally and moral-philosophically justified. Given this difficulty, Japan's participation was undoubtedly not so justified. Although this conclusion is easily reached, it is important to examine whether Diet members considered the principle during discussions in the Diet.

When the issue of right intention for conducting OIF was brought to the Diet,

Cabinet members and LDP members specified that the legal basis for attacking Iraq was UNSCR resolutions, while opposition party members criticized this opinion and said that the Iraq issue should be left to the inspection team. However, the principle of necessity in *jus ad bellum* means that Iraq should have attacked others before the US and its allies could insist on having the right intention for attacking Iraq. Although the principle of necessity in *jus ad bellum* specifies the condition of self-defence, none of the Diet members pointed out that Iraq had not used military force against the US and its allies or UN members. Those who noted that the issue should have been left to the inspection team might have implied that there was no just cause for the US and its allies to attack Iraq; however, the Diet members seemingly relied on UNSCR 1441, for which reason they did not consider why there was no just cause. Their failure to consider the issue of right intention is clearly demonstrated in the words of PM Koizumi, who agreed with the US position in attacking Iraq because he believed that Iraq's threat to international society outweighed the attack of OIF. However, a threat is not an attack; therefore, none of the states should have exercised the right to self-defence.

While Diet members focused on ascertaining the US legitimacy for invading Iraq, they seemingly did not discuss the legitimacy in providing logistical support. Some Diet members found that, under domestic law, no legitimacy existed for Japan's participation in OIF; however, Diet members should instead have considered whether or not Iraq had attacked UN members. If they had done so, the GOJ could have queried whether dispatching JSDF personnel to Iraq for self-defence was constitutional under

domestic law; however, since Iraq had not attacked others, this discussion was irrelevant.

By examining Diet reports on the right intention for the US and its allies for attacking Iraq, we can conclude that Diet members did not consider the principle of necessity in *jus ad bellum*. While Japan did not ultimately provide support for the invasion of Iraq, it should have considered the principle of necessity for the two reasons: first, there was a possibility for Japan to provide logistical support to the US military; and second, Japan had refuelled the US naval fleets engaged in OIF by applying the ATSMML (see 4.2).

4.4.2. The Principle of Proportionality

Although the principle of necessity in *jus ad bellum* was not considered in Diet discussion, this subsection will examine whether the GOJ considered the principle of proportionality in *jus ad bellum*. As this principle examines whether the quality and quantity of military power used by the US and its allies was well-balanced to the threat proposed by the Iraqi possession of WMDs, this subsection will examine whether the GOJ considered this issue when discussing Japan's participation in the operation.

Because the US had taken massive measures when engaging in international military operations, a then DPJ member pointed out the possibility that the US had

violated human rights in general (see 4. 3. 2). Although this possibility was noted before the US engaged in OIF, the Cabinet members had not advised the US regarding the appropriate quality and quantity of force used in the operation. Nonetheless, PM Koizumi noted that the potential damage caused by passing on WMDs to dangerous dictators or terrorists would outweigh the potential damage caused by invading Iraq. If WMDs were found in Iraq, this comment may have proven valid; however, the inspection team reported that Iraq did not possess WMDs. Moreover, the possession of WMDs did not give the US and its allies the right to violate human rights in general. One official mentioned that Japan did not need to consider the rights of civilians in Iraq because they had elected Saddam Hussein as President of Iraq and thus the repercussions were their own responsibility (interview with a former director-general of the Ministry of Defense, 24 July 2015). The above analyses lead to the conclusion that the GOJ did not consider the violation of human rights during discussions in the Diet, although Japan should have considered about the principle of proportionality in *jus ad bellum* when discussing participation in OIF.

4.5. *Jus post Bellum*

The examination of *jus post bellum* is highly relevant to Japan's participation in OIF. As reflected in the name of SMHRA, its purpose was to enable JSDF personnel to engage in reconstruction activity in Iraq. As specified in Chapter Two, all sovereign states should follow the normative principles of *jus post bellum* despite having the intention to support

local people to live peacefully and safely. Therefore, this section will examine whether the GOJ attended to the normative principles of *jus post bellum* when deciding to participate in reconstruction activity in Iraq.

The first factor for consideration is the principle of necessity in *jus post bellum*. Based on the Diet deliberations analysed in the previous section, particularly in 4.3.3., the first part of this section will examine whether the GOJ considered the principle of necessity in *jus post bellum*. If Iraq or the CPA, the provisional government of Iraq, requested Japan's support to recover Iraq from the 2003 invasion, the right intention or a just cause would exist for Japan to dispatch the JSDF to participate in reconstruction activity. Therefore, the first subsection will examine whether Japan's support for reconstruction activity in Iraq was required from the moral-philosophical perspective.

The second consideration applies the principle of proportionality in *jus post bellum*. This is the most important factor to examine because it helps to identify whether the support provided by the GOJ was suitable in quality and quantity. This principle is most significant due to non-interventionism, as specified in the UN Charter, which means that Japan should not provide any support to Iraq without a request by the Iraqi government.

4.5.1. The Principle of Necessity

According to the Diet report, a related question was brought to the floor of the Diet on 13 June 2003 and a Cabinet member responded that there had been no official request from the US to participate in reconstruction activity; however, Cabinet members insisted that there had been a request from the US because the then US Deputy Secretary of Defense unofficially requested the specific measures which JSDF personnel would undertake during the reconstruction activity.

Although the GOJ found the request from the then US Deputy Secretary of Defense to be sufficient for Japan to participate in reconstruction activity, it is difficult to conclude that Japan's support was required. Speaking of the authority of Iraq at that time, the UN Security Council had given the US and the UK the responsibility to govern Iraq. Therefore, Japan should have obtained a request from both countries, not just the US, to provide logistical support in reconstruction activity. Some found that the CPA, the interim organisation established until a new Iraqi government was formed, were responsible for making the request. The CPA comprised not only the US but also the UK, Australia, and Poland. If the CPA had the authority to reconstruct Iraq, Japan should have received a request from this organization, not only from the US.

For all the reason, this chapter points out that the GOJ did not sufficiently consider the principle of necessity in *jus post bellum* when related discussions on dispatching the JSDF to participate in the reconstruction activity was held in the Diet.

4.5.2. The Principle of Proportionality

Although there was no official request from the CPA, the GOJ dispatched JSDF personnel to participate in the reconstruction activity. The second principle in *jus post bellum* guides us as to whether the quantity and quality of JSDF measures during the reconstruction activity were balanced.

By analysing discussions on the role of JSDF personnel during OIF in the Diet, we can conclude that Diet members focused on the area to which personnel would be dispatched rather than on the role of JSDF personnel. The lack of interest in the role of JSDF personnel, including the quality and quantity thereof, is demonstrated in the procedure to be taken: their activity was to be decided by the Cabinet after the SMHRA bill was passed. Since no discussion occurred on their reason for being heavily armed, we cannot conclude that Diet members fully considered the principle of proportionality in *jus post bellum*.

4.6. Conclusion

This chapter has examined whether OIF was legally and moral-philosophically justified. Through several examinations, we have discovered that Japan omitted to consider the principles of *jus ad bellum* and *jus post bellum* when discussing Japan's participation in OIF. In closing this chapter, this section will explain why this conclusion was drawn.

There are two reasons to support this conclusion: first, there was a lack of consideration for the justification for invading Iraq, related to the principle of necessity; and second, there was a failure to effectively consider legitimacy in reconstructing Iraq.

Regarding the justification for invading Iraq, it is difficult to identify a legal justification because Iraq did not attack any UN members before OIF was conducted. There is a high possibility that the attack executed by the US and its coalition allies comprised the illegal use of force because they believed Iraq to comprise a threat to international society without evidence to that effect. Moreover, Iraq had not attacked other countries. Based on the reasons, it is difficult to adjudge the 2003 invasion of Iraq to have been theoretically justified. Regarding the result of analyses, the GOJ evidently only considered strengthening its relationship with the US, which insisted invading Iraq, despite its necessary to consider the legal and moral-philosophical bases for invading Iraq; therefore, we may conclude that the GOJ did not focus on the right intention for invading Iraq when discussing the legitimacy of invasion.

Regarding Japan's reconstruction support, no official request was received from the US or its allies, such as the CPA, when discussing whether or not to dispatch JSDF personnel to participate in reconstruction activity. Although a small proportion of the Iraqi public were satisfied with Japan's reconstruction support, this limited approval does not suggest that the GOJ seriously considered the reconstruction of Iraq: the GOJ was politically determined to dispatch JSDF personnel to avoid the shame of having only

sent financial support to the multinational forces in the Gulf War (see 1.3.). While the GOJ's discussion can be explained with IR theory, it is not legally and moral-philosophically justified. Thus, the examination demonstrates the lack of consideration of the principles of *jus post bellum*.

The two case studies, Japan's participation in OEF and OIF, demonstrate that Japan did not sufficiently consider moral-philosophical issues when deciding to participate in international military operations. In the next chapter, dealing with Japan's Legislation for Peace and Security, we will examine whether the GOJ considered moral-philosophical issues when deciding to participate in international military operations. Although Japan's enactment of Legislation for Peace and Security was unnecessary at the time, the GOJ seemingly sought to expand Japan's ability to participate in international military operations. However, if Japan seeks to participate in international military operations, the normative principles of Just War Theory should have been considered before dispatching the JSDF to such operations. Therefore, by examining whether the GOJ considered the normative principles of Just War Theory when enacting Japan's Legislation for Peace and Security, we can reach a conclusion on this matter by identifying what the GOJ should have considered when dispatching JSDF personnel to participate in international military operations.

Chapter Five. Japan's Legislation for Peace and Security

Approximately 10 years after Japan participated in OEF and OIF, the Abe Cabinet submitted a Cabinet Decision to the floor of the Diet on 1 July 2014, specifying the possibility of Japan's participation in international military operations without enacting any temporary statutes, as had been required for OEF and OIF. This chapter will analyse the related discussions in the Diet to examine whether the GOJ considered the normative principles of Just War Theory when holding the discussions on the Cabinet Decisions.

This chapter begins with the Abe Cabinet's intention to call the Decision on Development of Seamless Security Legislation to Ensure Japan's Survival and Protect its Peoples (*kuni no sonritsu wo mattōshi, kokumin wo mamoru tameno kireme no nai anzen hoshō hōsei no seibi ni tsuite*: hereafter, the Cabinet Decision). Unlike in the previous two cases, in this case, there were no international military operations in which Japan proposed to participate; therefore, the call for the Cabinet Decision by the Abe administration on 1 July 2014 is the starting point for the GOJ's discussion.

The second section will introduce the rules and conditions of JSDF personnel using military weapons under Japan's Legislation for Peace and Security (*heiwa anzen hōsei*). There are two possible measures for JSDF personnel to take because this Legislation combines two Acts; therefore, this section will demonstrate what rules and conditions JSDF personnel should adopt in various situations while participating in

international military operations.

Based on the basic knowledge of Japan's Legislation for Peace and Security, this chapter will analyse the discussions held in the Diet. As in Chapters Three and Four, this chapter will analyse Diet discussions under six different topics: Japan's right intention for participating in international military operations; the quality and quantity of international military operation; justifiable situations for JSDF personnel to use military weapons; the quality and quantity of Japanese measures; the necessity to participate in reconstruction activities; and finally, the quality and quantity of Japan's activity in reconstruction. After analysing these six topics, the same approach taken in Chapters Three and Four will be adopted. In the absence of a concrete situation requiring the development of Japanese security, hypothetical situations will be established to develop the examinations. In relation to each category of Just War Theory, we can judge whether the GOJ took the normative principles of the theory into consideration when enacting Japan's Legislation for Peace and Security.

5. 1. Purpose of Enactment

While the Cabinet introduced 11 security-related bills, it is impractical to analyse all bills as occurred in the Diet. Therefore, this section will divide the bills into two categories as the Diet did: the Peace and Security Legislation Development Act (*heiwa anzen hōsei seibi hō*) and the International Peace Support Act (*kokusai heiwa shien hō*). Based on this

division, this section will focus on the Abe Cabinet's aim in bringing these bills to the Diet.

5.1.1. Peace and Security Legislation Development Act

This Act is based on the existing laws on Japan's security, such as the Self-Defence Forces Law, the International Peace Cooperation Act, and the Law Concerning Measures to Ensure Peace and Security of Japan in Situations in Areas Surrounding Japan. Based on the existing laws, some amendments were added and submitted to the floor of the Diet. The purpose of so doing was outlined in the press conference of 15 May 2014: "(...) 1.5 million Japanese people live overseas and another 18 million travel abroad annually. Suppose a conflict suddenly arises in their destinations. Suppose also the attack is made in the sea near Japan, right when Japanese people who are escaping from where the conflict had occurred are being rescued and transported by our ally, the United States, which has the necessary capabilities to do so. Even in such cases, unless the Japanese nationals themselves were attacked, the JSDF could not defend the US vessels transporting the Japanese nationals. This is the current constitutional interpretation" (Abe, 2014). This speech was made before the Cabinet Decision was submitted; however, it was sufficient to demonstrate Japan's impatience to rescue its civilians when faced with danger. After submitting the Cabinet Decision, several Japanese civilians became the victims of crucial incidents in Algeria, Syria, and Tunisia. In response, PM Abe continuously expressed the necessity to protect the lives of Japanese people abroad (Abe,

2015). He not only considered threats to the lives of Japanese civilians far away from Japan but also advocated the necessity to maintain international peace and security in East Asia: “(...) maintaining the peace and security of Japan and ensuring security as well as securing its people’s livings are the primary responsibilities of the Government. In order to adjust to the changes in the security environment surrounding Japan and to fulfil its responsibility for Japan, the Government, first and foremost, has to create a stable and predictable international environment and to prevent the emergency threats by advancing vibrant diplomacy with sufficient institutional capabilities, and has to pursue peaceful settlement of disputes by acting in accordance with public international law and giving emphasis to the rule of law” (Cabinet Decision, 2014).

For all, the intention of enacting the Peace and Security Legislation Development Act was to prevent innocent Japanese civilians from falling victims to emerging threats far away from and surrounding Japan.

5.1.2. International Peace Support Act

While the Peace and Security Legislation Development Act aims to protect Japanese civilians, the International Peace Support Act aims to collaborate with other nationals to maintain international peace and security. The purpose of this Act was explained in the Diet as follows: “since international peace and security have been threatened, international society should collaborate together by following the purpose of the UN

Charter. Japan, as a member of international society, should be active and positive to contribute to other national defence. This contribution will go far toward solving the problem of maintaining international peace and security” (The House of Representatives, 2015). Compared with the purpose of the Peace Security Legislation Development Act, no clear background was demonstrated for the enactment of this Act; nevertheless, it demonstrates Japan’s intention to cooperate with other countries to maintain international peace and order.

5. 2. The Roles of JSDF Personnel

The former Act, the Peace and Security Legislation Development Act, allows Japan to protect its territory and civilians from threats, while the latter, the International Peace Support Act, allows Japan to participate in international military operations to maintain international peace and order. Both Acts were submitted with the will of the Cabinet to expand Japan’s military capability; however, neither of these Acts allow Japan to be fully active in international military operations. Therefore, this section will introduce the possible situations in which Japan may participate in international military operations and the conditions of JSDF personnel using military weapons during such operations.

5.2.1. Peace and Security Legislation Development Act

The Peace and Security Legislation Development Act specifies that JSDF personnel may

use military weapons against others by making amendments to two existing laws: the Self-Defence Forces Law and the International Peace Cooperation Act. The amendment of the former specifies three different situations in which JSDF personnel may take military action against others: when Japanese civilians are facing danger from threats (see Article 84-3); when it is necessary to use weapons to protect persons, weapons, and other equipment of the US Forces (see Article 95-2); and when Japan is in a situation that poses a threat to its survival (*sonritsu kiki jitai*) (see Article 88-1). Additionally, the amendment of the International Peace Cooperation Act sets three different situations in which JSDF personnel may use military weapons (see Article 25): when JSDF personnel needed to protect themselves from armed groups; when JSDF personnel are involved in so-called “*kaketsuke keigo*”¹¹ operations (see Articles 3-5 and 25); and when JSDF personnel are involved in safety-ensuring (*anzen kakuho*) operations (Ministry of Defense, 2017, p. 246).

While specifying the situations in which JSDF personnel may use military weapons against others, the GOJ establishes the conditions for use of military weapons by JSDF personnel as follows: “when an armed attack against Japan occurs or when an armed attack against a foreign country that is in a close relationship with Japan occurs and as a result threatens Japan’s survival and poses a clear danger to fundamentally

¹¹ The situation of “*kaketsuke keigo*” is explained as “when reasonable grounds are found for the unavoidable necessity to protect the lives of bodies of themselves or individuals related to operations that they intend to protect (however, inflicting injury on a person is permitted only in the cases of legitimate self-defence and aversion of clear and present danger)” (Ministry of Defense, 2017, p. 246).

overturn people's right to life, liberty and pursuit of happiness; when there is no other appropriate means available to repel the attack and ensure Japan's survival and protect its people; use of force should be limited to the minimum extent necessary" (the Government of Japan, 2016). The conditions for Japan to use military force are named the "Three New Conditions" (hereafter, TNC) to demonstrate the difference from Japan's original conditions to exercise the right to self-defence set in 1990. Traditionally speaking, the GOJ set three original conditions that must be met to exercise the right to self-defence: "when there is an imminent and unjust infringement on Japan; when there is no other appropriate means available to repeal the attack; and use of force should be limited to the minimum extent necessary" (Kudō Atsuo, 25 October 1990).

By comparing with the former conditions necessary to exercise the right to self-defence, the TNC specifies more concrete situations in which military action can be taken against others.

	Original	TNC
First Condition	When there is an imminent and unjust infringement on Japan	When an armed attack against Japan occurs or when an armed attack against a foreign country that is in a close relationship with Japan occurs and as a result threatens Japan's survival and poses a clear danger to fundamentally overturn people's right to life, liberty and pursuit of happiness
Second Condition	When there is no other appropriate means available to repel the attack	When there is no other appropriate means available to repel the attack and ensure Japan's survival and protect its people
Third Condition	Use of force should be limited to the minimum extent necessary	

Figure 5-1 The Difference between the Original Conditions and TNC

(Source: Author based on the answers in the Diet)

The Director-General of the Cabinet Legislation Bureau explained the reason for changing the conditions from the original version to TNC as follows: “when an armed attack against a foreign country that is in a close relationship with Japan occurs and as a result threatens Japan’s survival and poses a clear danger to fundamentally overturn people’s right to life, liberty and pursuit of happiness” corresponds to the 1972 government interpretation which specifies “the situation of an imminent and unjust

infringement which overturns people's right to life, liberty, and pursuit of happiness when Japan is attacked by other countries" (Yokohata Yūsuke, 14 July 2014). Therefore, he believes that the condition does not deregulated the original condition set for Japan's right to exercise the right to self-defence.

5.2.2. International Peace Support Act

While the possible situations and conditions for JSDF personnel to take military action were demonstrated in the amendments to the Self-Defense Forces Law and the Act on Cooperation with the United Nations Peace Keeping Activities, the International Peace Support Act specifies the situation in which logistical support can be provided to maintain international peace and security. This situation, named an international peace cooperative situation (*kokusai heiwa kyōdō taisho jitai*), sets the following three conditions that must be identified: "situations that threaten peace and security of the international community;" "the international community is collectively addressing the situations in accordance with the objectives of the UN Charter to remove the threat;" and, "Japan, as a member of the international community, needs to independently and proactively contribute to these activities" (Ministry of Defense, 2017, p. 249). In these situations, Japan may work together with foreign armed forces to maintain international peace and security.

5. 3. Diet Deliberation

Although the GOJ specified the possible situations and conditions for JSDF personnel to use military weapons against others and to provide logistical support to maintain international peace and security, no cases were applicable when holding the discussions in the Diet. For this reason, a question was frequently brought to the floor of the Diet, querying in what situations JSDF personnel would be dispatched (Ōtsuka Kōhei, 20 March 2015; Okada Katsuya, 20 May 2015 and 26 June 2015; Ogata Rintarō, 22 May 2015; Kamiyama Yōsuke, 22 May 2015; Ōta Kazumi, 26 May 2015; Matsuno Yoriyoshi, 27 May 2015; Kitagawa Kazuo, 28 May 2015; Eto Akinori, 29 May 2015; Yasui Misako, 2 June 2015; Ono Jirō, 4 June 2015; Tsujimoto Kiyomi, 5 June 2015; and Satō Masahisa, 9 June 2015). At the same time, Diet members asked the Cabinet under what conditions Japan may participate in international military operations. Therefore, this section will analyse Diet debates explaining the situations and conditions in which JSDF personnel may be dispatched, either to take military action or to provide logistical support. Since this dissertation aims to examine whether the GOJ considered the normative principles of Just War Theory, this section focuses on whether Diet members noted the related issues: the right intention or a just cause for participating in international military operations; the quality and quantity of international military operations; the role of JSDF personnel; the quality and quantity of the JSDF role; the participation in reconstruction activities; and the quality and quantity of the JSDF role during reconstruction activities. This analysis will be based on Diet records provided by the National Diet Library and interviews

conducted for this dissertation (see Appendix).

5. 3. 1. Reasons for Participating in International Military Operations

According to the Peace and Security Legislation Development Act, there are two ways for Japan to participate in international military operations: one is to take military action against others, and the other is to provide logistical support for close-relationship countries. The GOJ found the right intention for participating in international military operations in each situation; therefore, this subsection will be divided into two to analyse how the GOJ found such an intention.

5. 3. 1. (a) Military Actions against Others

Although the Cabinet found legitimacy for Japan to use military weapons under the TNC, Diet members were not satisfied with the conditions. In particular, the first condition set in the TNC confused the Diet members; therefore, a question was asked regarding Japan's legitimacy in exercising the right to self-defence: "According to the explanation of the Director-General of the Cabinet Legislation Bureau, (...) Japan can exercise the right to collective defense in either a situation when a foreign country is attacked or Japan is attacked. At first, [I would like to] ask Prime Minister about it" (Kaieda Banri, 14 July 2014). PM Abe responded that it is necessary to check the situation with the TNC to decide whether the right to self-defence can be exercised (14 July 2014). Based on this

answer, this dissertation will analyse in what situations the GOJ found the right intention for taking military actions against others.

(i) North Korea vs. the US

PM Abe was asked to explain in what situation Japan would take military actions against others, using examples (Okada Katsuya, 26 June 2015). While PM Abe did not give the actual names of countries, he responded as follows: “In the situation where armed conflict is imminent in the vicinity of our country [Japan], the US military has also been acting to control the expansion of the situation, Japan also undertook countermeasures under the Armed Attack Situations Response Act (*buryoku kōgeki jitai taisho hō*). However, the situation deteriorated further and armed attack against another country closely related to Japan, such as the US, occurred. Furthermore, although it was not recognised at that time that an armed attack against Japan had occurred, the attacking country possessed a considerable number of ballistic missiles that could be used to attack Japan, and the country expressed the intention to attack Japan” (26 June 2015). Based on this explanation, Figure 5-2 below is formulated.

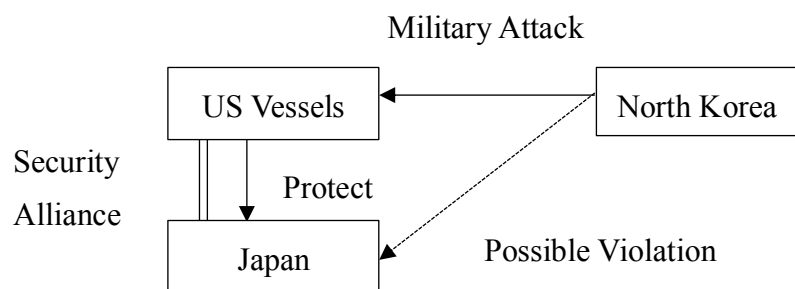


Figure 5-2 North Korea vs. the US

(Source: Author based on the Japanese Diet reports)

Regarding this situation, one of the significant concerns for Diet members was how to define a possible violation of Japan by North Korea. The Director-General of the Cabinet Legislation Bureau explained as follows: “[the government] needs to judge whether the situation meets the TNC or not when there is no violation of Japan: if all three TNCs have been met, Japan can exercise the right to collective self-defence force” (Yokohata Yūsuke, 29 June 2015). However, an opposition party member asked for clarification on whether or not Japan can exercise the right to collective self-defence when US vessels are attacked (Nagatsuma Akira, 29 June 2015). It was important to clarify this as there is some possibility for US vessels to be attacked in the imminent vicinity of Japan while they are not in operation to protect Japan and its people. As the discussion continued, the Director-General of the Cabinet Legislation Bureau responded that North Korea would have to have a clear intention to attack Japan before countermeasures would be taken (Yokohata Yūsuke, 29 June 2015). Referring to the response of the former Director-General of the Cabinet Legislation Bureau (Akiyama Osamu, 16 May 2003 and 19 June 2003), the current government official responded that the way to examine a possible violation

against Japan by North Korea was as follows: “When there is tension between the offender [North Korea] and Japan, the US vessels are sailed to support Japan. Under this situation, the first military attack [from North Korea] was against the US vessel. When this occurs, there is a higher possibility of authorising the attack [against the US] as an attack against Japan. If the reason that the US vessels are attacked [by North Korea] was not Japan, it is difficult to authorise the military attack as intending to attack Japan. In any cases, the government needs to judge the situation from the specific facts, situation, and the situation in which the US vessels were attacked” (Yokohata Yūsuke, 29 June 2015).

Based on this explanation, it is possible to deduce that Japan may legitimately take up military weapons against North Korea when there is international tension between the two countries. However, the criteria for possible violation are not yet clear; thus, the government will decide based on the given situation. Several Diet members asked whether or not Japan would attack North Korea pre-emptively if there was no violation against Japan (Tsujiyama Kiyomi and Isa Shinichi, 6 June 2014); the governmental official responded as follows: “As long as there is a violation to the close-relation country, it is possible to exercise the so-called right to collective self-defence” (Yokohata Yūsuke, 6 June 2014). A Cabinet member then continued: “According to public international law, it is necessary to have a request from the victims of the country; therefore, an occurrence of use of force is an assumption [of the need] to exercise the right to collective self-defence” (Kishi Nobuo, 6 June 2014).

(ii) Protecting Japanese National Residents

The second situation is when Japanese national residents are facing danger. As mentioned in 5.1.1., protecting Japanese national residents abroad reflects the intention of PM Abe in submitting the Cabinet Decision to the floor of the Diet. The GOJ provided several hypothetical scenarios in which the lives and bodies of Japanese national residents might be threatened; however, this dissertation does not examine each of these individually because the GOJ seemingly found a legitimate reason for using military weapons when protecting Japanese national residents.

The GOJ seems to have found the right intention for using military force against others when the purpose is to protect Japanese national residents. However, PM Abe also specified the possibility of a US vessel rescuing Japanese national residents abroad; therefore, military weapons could also be used against others to protect US vessels engaged in operations to rescue Japanese national residents (16 February 2015). Again, PM Abe did not specify the country; however, this dissertation formulates North Korea as the offender to understand the situation clearly.

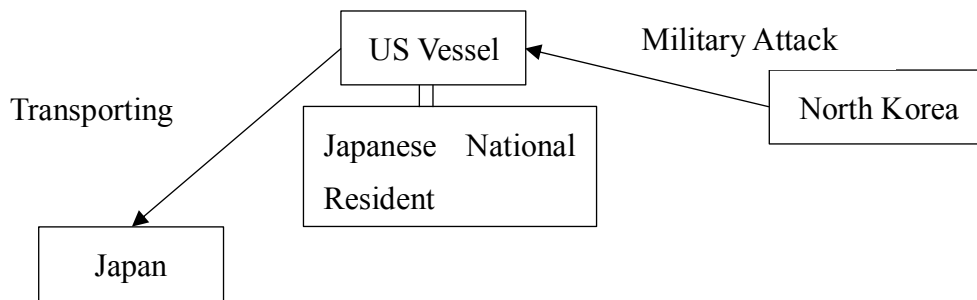


Figure 5-3 US Vessel Transporting the Japanese National Residents

(Source: Author based on the Diet Reports)

In the situation delineated above, North Korea has not attacked Japan; therefore, an opposition party member asked PM Abe to confirm that this situation would comprise a legitimate reason for Japan to use military force against the offender (Gotō Yūichi, 3 July 2015). PM Abe responded as follows: “the country in the imminent vicinity of Japan [North Korea] is attacking the US vessel which is transporting Japanese national residents, so that this situation is possibly identified as a situation posing threats to the survival of Japan¹²” (3 July 2015).

Although PM Abe specified that Japan may take military action to protect US vessels engaged in an operation to transfer Japanese national residents to Japan, the Minister of States responded differently: “whether the Japanese national residents are in the US vessels or not is not an absolute factor for the government to take military actions. The fact that Japanese national residents are transferred by US vessels is one of the elements for decision; however, it is not an absolute factor” (Nakatani Gen, 26 August

¹² Japan may use military weapons against others in a situation posing threats to the survival of Japan (*sonritsu kiki jitai*).

2015).

By analysing the responses of Cabinet members, their understanding seems to differ on when it is legitimate for Japan to take military action against others. Therefore, the Japanese criteria for using military weapons remain unclear, however, meeting the conditions set in the TNC is a decisive reason for the GOJ to take military measures against others.

(iii) Minesweeping Operations in the Strait of Hormuz

While the two scenarios described above were to protect Japan and its peoples from physical violation, another scenario was given to exemplify protecting Japan and its people from indirect threats, i.e. the blockade of the Strait of Hormuz. In this instance, any attack on tankers transferring oil to Japan would threaten the survival of Japan and the lives of its people due to lack of oil.

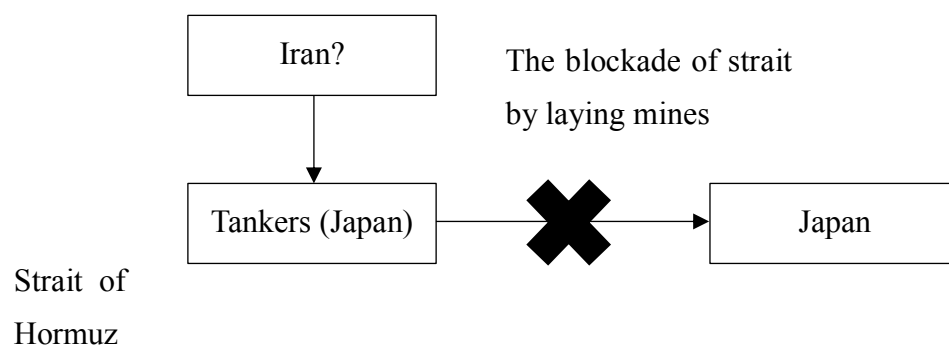


Figure 5-4 Minesweeping Operations in the Strait of Hormuz

(Source: Author based on Diet report)

The legitimacy of Japan's participation in minesweeping operations in the Strait of Hormuz was frequently discussed in the Diet. PM Abe explained as follows: "[the government will evaluate] whether a delayed supply of petroleum and other energy sources would result in not only economic impacts but also shortages of living goods and electricity, and judge whether the situation is identified as posing threats to the survival of Japan" (18 May 2015).

Although PM Abe specified Japan's legitimacy in participating in minesweeping operations in the Strait of Hormuz, the opposition party members were not satisfied. A Diet member in the then DPJ raised the following point: "Japan has enough oil stocked to allow Japanese people to live for more than six months; therefore, there is no point in participating in minesweeping operations in the Strait of Hormuz" (interview with a member of the House of Councillors, 6 July 2015). Other Diet members also queried the lack of reasons for participating in minesweeping operations in the Strait of Hormuz: "According to the website of JOGMEC, Japan Oil, Gas and Metals National Corporation, 870,000 kilo-liters of oil with state stockpiles and private stockpiles are the common property of our citizens, and if we convert that amount into the number of days of stockpiling, as of the end of March 2015, it is about 197 days. Even if the import of petroleum ceases, it can maintain the same life as it is now. I repeat, it is written on the website of JOGMEC, a government agency. Due to this fact, the blockade of the Strait of Hormuz does not apply to the first condition of the so-called TNCs, which specifies 'a clear danger to fundamentally overturn people's right to life' as much as armed attacks

on our country” (Edano Yukio, 18 September 2015). Although the difficulty in meeting the TNCs was pointed out by opposition party members, PM Abe explained the right intention for participating in minesweeping operations as follows: “it is not only the economic affect caused by the international conflicts. Nor is it not only because one of the necessities of life will be in shortage due to the conflict. It is important for Japan, surrounded by the sea, to maintain the safety of transporting life necessities. (...) Japan has six months of oil reserved; however, if it is not possible to remove the mine, and Japan faces a constant energy crisis. (...) Someone has to remove the mine” (27 May 2015). Thus, the blockade of the Strait of Hormuz was categorized as posing threats to the survival of Japan, despite its distance from Japan.

Based on PM Abe’s response, a blockade of the Strait of Hormuz would incur “a result that threatens Japan’s survival and poses a clear danger to fundamentally overturn people’s right to life, liberty, and pursuit of happiness;” therefore, the Cabinet found legitimacy in participating in minesweeping operations in the Strait of Hormuz.

5. 3. 1. (b) Provision of Logistical Support to its Allies

Japan’s Legislation for Peace and Security not only specified the possibility of Japan taking military actions against others. PM Abe also explained scenarios in which logistical support would be provided: “when the situation to essentially affects Japan’s peace and security” (26 June 2015); however, this explanation was not sufficiently clear

because the difference between the Law Concerning Measures to Ensure Peace and Security of Japan in Situations in Areas Surrounding Japan and the Peace and Security Legislation Development Act was not sufficiently clear (Okada Katsuya, 26 June 2015). This confusion was evident from the interview with an opposition Diet member: “I cannot find any points on legislating this act [Peace and Security Legislation Development Act] because no cases apply to the existing law [Law Concerning Measures to Ensure Peace and Security of Japan in Situations in Areas Surrounding Japan]” (interview with a member of the House of Councillors, 6 July 2015).

Due to the unclear definition and unclear reason for enacting the legislation, Diet members entered the discussion based on an example of a situation in which Japan may provide logistical support to maintain international peace and security. This section will analyse how the GOJ found such a situation, based on a question asked in the Diet about Japan’s legitimacy in providing logistical support.

Okada Katsuya gave the following example: “an international conflict is taking place in the area surrounding Japan, and the US military is providing support to its ally” (20 May 2015). PM Abe also explained the situation without specifying the names of the countries: “when country A [North Korea] is invading country B [South Korea], the US is active to stop the invasion due to the relation of security allies. For sure, (...), there is the possibility for Japan to be involved in the conflict [between North Korea and South Korea]. In this situation, Japan could not save the US vessels because there is no physical

violation to Japan. However, I have an awareness of the issue: this is why the TNC are set. What we need is to judge whether the situation meets the TNC or not” (3 July 2015). While PM Abe did not specify the names of countries, this dissertation clarifies the situation by assuming that there is an international conflict between North Korea and South Korea, and US vessels are in operation to protect South Korea under the security treaty.

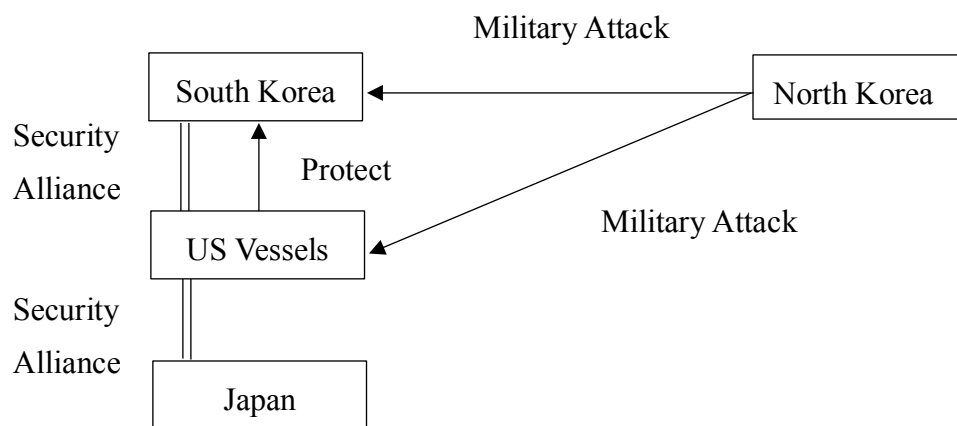


Figure 5-5 Providing Logistical Support

(Source: Author, based on the hypothesis presented by PM Abe (26 July 2015))

When Japan is facing the situation shown in Figure 5-5 above, North Korea is not posing a serious threat to Japan; therefore, the GOJ would not order JSDF personnel to protect Japan and its people. However, Japan may provide logistical support to the US military by applying Article 1 of the Armed Attack Situations Response Act.

Based on this scenario, an opposition party member asked PM Abe the following question: “According to Martin Levi van Creveld, a military historian, military

logistics comprises 90 percent of the work in wars. What Japan would provide to the US military is logistical support (*kōhō shien*), and military logistics means logistical support in Japanese. Although Japan does not have the intention to attack the offender [North Korea], there would be a higher possibility of retaliating against Japan because Japan is the country fulfilling the military logistics needs of the US” (Kakizawa Mito, 15 May 2015). He did not ask PM Abe whether it would be legitimate for Japan to provide logistical support to the US; however, he did ask whether PM Abe was aware of the possibility that North Korea would engage in retaliation activity against Japan (*ibid*). PM Abe responded as follows: “when JSDF personnel are providing logistical support to the US military, it is necessary to avoid the danger of attack. Also, we [Japan] need to provide suitable logistical support. Therefore, JSDF units would not be active in an area where it is difficult to maintain their safety. Also, the JSDF units would stop engaging in operations until their safety is maintained. JSDF personnel would not use military weapons [against the enemy] to continue their operations” (15 May 2015). Although Cabinet members explained that there is a fewer possibility for JSDF personnel to be endangered, the Cabinet did not respond to the Kakizawa’s comment on Japan’s possibility to retaliating of attacking North Korea.

5. 3. 2. Quality and Quantity of International Military Operations

While the right intention for participating in international military operations was specified in the first and second conditions in the TNC, the quality and quantity of

international military operations is specified in the third condition as follows: “use of force should be limited to the minimum extent necessary” (the Government of Japan, 2016). As seen in the previous chapters, the term “minimum extent necessary” has frequently been recited by Diet members when discussing the quality and quantity of international military operations; however the definition of “minimum extent necessary” has yet to be clarified. Thus, questions about the definition of “minimum extent necessary” use of force were brought to the floor of the Diet.

When Diet members asked for the definition of “minimum extent necessary,” the Director-General of the Cabinet Legislation Bureau replied as follows: “the meaning of ‘minimum extent necessary’ used in the third condition is the ‘minimum extent necessary use of force’ to protect our country [Japan] on the assumption of the second condition, to ensure Japan’s survival and protect its people” (Yokohata Yūsuke, 28 May 2015). Based on this response, a Diet member probed further on the quality and quantity of operations: “(...) [you mean] Japan would take military action when the attack against another country [the US] occurs. Japan would take military action to exclude the violence; therefore, [the government] would not consider whether Japan’s quality and quantity of military action is proportional to the attack taken by the offender [North Korea] because the purpose of Japan’s military action is to ensure its survival and protect its people” (Kitagawa Kazuo, 28 May 2015). On another occasion, the then Minister of Foreign Affairs specified that Japan’s original understanding of the “minimum extent necessary” use of force is as follows: “the term is typically used to paraphrase the principle of

proportionality; however, Japan has set the original conditions to exercise the right to self-defence” (Kishida Fumio, 8 July 2015). Continuing, he explained the Japanese interpretation of the “minimum extent necessary” use of force as follows: “the quality and quantity of Japanese use of force is sufficient to ensure its survival and to protect its people. (...) the government subjectively decide on the quality and quantity of Japanese use of force” (*ibid*).

The Cabinet’s explanation was not sufficient for Diet members; therefore, the quality and quantity of force used to protect Japan was raised as a question to the floor of the Diet. An opposition party member asked whether it is possible to ‘beat up’ the offender [North Korea] if the government found it necessary to take military action to ensure its survival and protect its peoples (Terada Manabu, 8 July 2015). The a General-Director of the Cabinet Legislation Bureau responded as follows: “it depends on how the third condition is applied to the situation. Bringing the offender [North Korea] under control might be better for Japan to maintain Japanese safety; however, our country has a restriction on the use of force under the JCL. Due to this restriction, Japan is allowed to take military action to drive the offender out of Japan” (Yokohata Yūsuke, 8 July 2015). He continued as follows: “(...) Japan cannot take the quality and quantity of military power to ‘beat up’ the offender. Speaking of the minesweeping operations, disposing of marine mines is surely a threat to the lives and survival of our civilians; therefore, the blockade of the Strait of Hormuz is applicable with the second and third conditions of the TNC” (*ibid*).

The answers in the Diet demonstrate that the GOJ interprets the “minimum and necessary” use of force as the quality and quantity necessary to secure Japan’s survival and the lives of its citizens. In this sense, Japan is not willing to attack the offender with the same quality and quantity of attack that Japan has incurred. However, the quality and quantity of Japan’s logistical support to the US was not discussed in the Diet.

5. 3. 3. The Situation of Using Military Weapons against Others

When the related discussions on the roles of JSDF personnel were held in the Diet, Diet members were conscious of when military weapons would be used. This is seemingly due to the restriction on the use of weapons under the JCL and the anxiety about sending JSDF personnel to dangerous areas. The Director-General of the Cabinet Legislation Bureau explained the possibility of violating Article 9 of the JCL as follows: “the ‘use of force’ specified in the first paragraph of Article 9 means, basically, the act of hostilities between our country and another sovereignty or organisations treated the same as a sovereignty state” (Yokohata Yūsuke, 12 June 2015); therefore, he identified that the use of force to ensure Japan’s survival and to protect Japanese people is not war potential as specified in Article 9 of the JCL.

Since the Cabinet explained that JSDF military activity would not violate the JCL, the conditions under which JSDF personnel could use military weapons were

discussed in the Diet. The Cabinet decision specifies the conditions under which JSDF personnel may use military weapons as follows: “(...) our country [Japan] has set the limitation for JSDF personnel to use military weapons to protect themselves and to protect military weapons.” As the Cabinet Decision specifies, Cabinet members explained the legitimacy of using military power to protect JSDF personnel as follows: “I have understood that the use of military force to protect the lives and equipment of JSDF is not identified as war potential which is prohibited by the JCL because protecting the lives and equipment of the JSDF is identified as a natural right” (Yokohata Yūsuke, 12 June 2015). On another occasion, PM Abe also specified that self-defence is categorised as a natural right (29 July 2015). Referring to natural rights, Cabinet members explained that JSDF personnel may use military weapons when their lives are threatened.

The use of military weapons against others is not only to protect JSDF personnel who are active in international military operations; they may also be used when the JSDF is in the operation of so-called *kaketsuke keigo* (Ministry of Defense, 2017, p. 246). Although the so-called *kaketsuke keigo* operation is specified in the Cabinet Decision, this operation was not defined until 25 August 2015, when PM Abe replied to an opposition party member asking about the possibility that *kaketsuke keigo* would violate Article 9 of the JCL (Fukushima Mizuho, 25 August 2015). PM Abe responded as follows: “when the local security authority cannot deal with maintaining domestic peace and security, the units of PKO which are to maintain the local facilities are dispatched to take the place of the local security authorities. The units of PKO would be on the operation

based on the request from the other PKO participants and NGOs” (Abe, 25 August 2015). Although PM Abe explained the situation of *kaketsuke keigo*, his explanation was not sufficiently clear to draw a picture; however, the situation is explained in the booklet of *Defense of Japan* published annually by the Ministry of Defense as follows: “when a Japanese NGO was active in one of the refugee camps in Goma, Zaire, a vehicle was robbed by some refugees. Due to this incident, the members of the NGO sought the JSDF to be dispatched to Goma to rescue the other refugees” (Ministry of Defense, 2016, p. 219). The incident in Goma occurred in 1994; however, the GOJ seemingly repented of not being able to dispatch the JSDF to support the members of the NGO. From the lesson of this experience, it seems that the Abe Cabinet was willing to dispatch JSDF personnel when NGO members or PKO civilian staff are seeking support from the JSDF.

The two scenarios described above demonstrate that the purpose of using military weapons against others is to protect the lives of Japanese civilians; however, the GOJ has also established another situation in which JSDF personnel may take military action against others; that is safety-ensuring operation. The operation is explained as follows: “uniformed [J]SDF personnel are permitted to use weapons within the limits judged reasonably necessary according to the circumstances, when reasonable grounds are found for the unavoidable necessity to protect the lives, bodies, or property of themselves or other individuals, or to eliminate obstructive behavior for their duties (however, inflicting injury on a person is permitted only in the case of legitimate self-defense and aversion of clear and present danger)” (Ministry of Defense, 2017, pp. 246–

7). Based on this definition, JSDF personnel may use military weapons against others to protect local people's lives, bodies, and/or property. Although this is specified in the booklet *Defense of Japan*, no discussions were held in the Diet on the possibility for JSDF personnel to use military weapons against others to protect the lives and local people.

5. 3. 4. Quality and Quantity of JSDF Personnel

This issue concerns permissible activities for the JSDF when participating in international military operations. As noted in Chapters Three and Four, the key point is whether the quality and quantity of JSDF personnel would be balanced so as not to overturn the offenders.

The quality and quantity of military measures used by the JSDF during in international military operations should comprise the “minimum extent necessary” (the Government of Japan, 2016). However, a point of controversy in the Diet was that the “minimum extent necessary” measure may violate Article 9 of the JCL (interview with a then DPJ member of the House of Representatives, 15 May 2015). To clarify how the “minimum extent necessary” measure would avoid violating Article 9 of the JCL, it is necessary to analyse the Diet members' discussions on the use of military power. The term “minimum and only necessary use of force” was first used in the Diet on 13 November 1972. Yoshikuni Ichirō, the then Director-General of the Cabinet Legislation Bureau, spoke the words to define Japan's war potential (13 November 1972). Since then,

“minimum and only necessary use of force” has been used as a concept of Japan’s war potential; therefore, there seems to have been consensus among Japanese politicians and government officials that the JSDF would only employ military measures to the degree of “minimum extent necessary” use of force. However, the quality and quantity of JSDF personnel deployed while participating in international military operations had not been discussed in the Diet, seemingly because the GOJ was satisfied that JSDF personnel would not kill or harm others.

5. 3. 5. Japan’s Participation in Reconstruction Activities

The final situation proposed in the Diet was the necessity for Japan to provide logistical support to maintain international peace and order, using the example of Japan’s participation in the reconstruction activity in Iraq (see Chapter Four). Compared with the Act on Cooperation with the United Nations Peace Keeping Activities, the International Peace Support Act allows Japan to participate in reconstruction activities conducted not only by the UN or international organisations authorised by the UN, such as the UNHCR, but also by regional organisations, such as the European Union (Ministry of Defense, 2017, p. 245). Furthermore, the International Peace Support Act allows Japan to participate in reconstruction activities with a Cabinet Order, which means that the Cabinet can decide when to participate in reconstruction activities. In this sense, the enactment of the International Peace Support Act will increase the opportunity for the JSDF to participate in reconstruction activities.

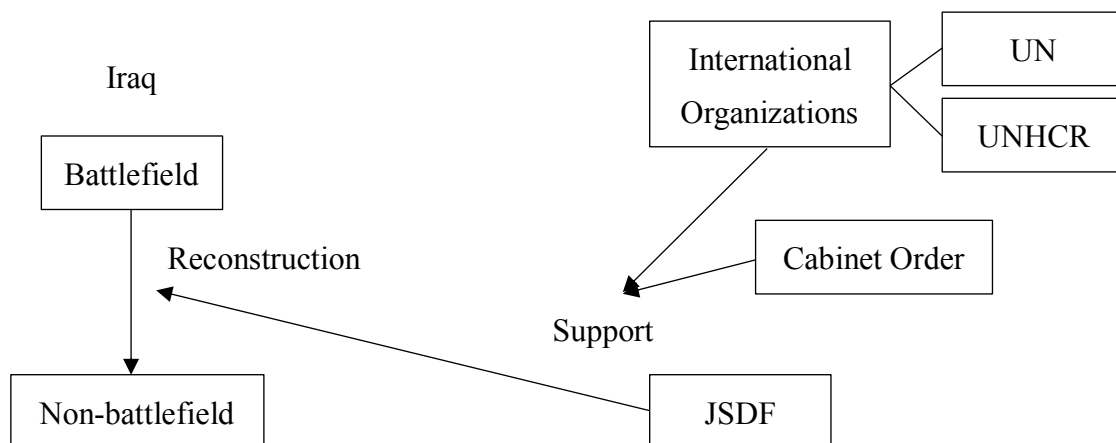


Figure 5-6 The Possible Situation of Cooperating in Reconstruction Activities

(Source: Author based on the hypothesis presented by the Government of Japan (2016))

Although this marked a significant change from the past, Diet members did not query the Cabinet or the GOJ regarding what situation would prompt participation in reconstruction activities. They did ask, however, about the possibility for JSDF personnel to be endangered if the situation was not sufficiently stable; however, Japan's legitimacy regarding when to dispatch JSDF personnel to reconstruction activities was not discussed in the Diet.

5. 3. 6. The Quality and Quantity of Measures during Reconstruction Activities

According to the booklet *Defense of Japan*, the possible measures for JSDF personnel to take during reconstruction activities are specified as follows:

<div></div>	Type of Measures	Measures	Difference between Existing Law
Cooperation and Support Activities	Supplies and Services to Armed Forces of Foreign Countries	Supply	Allows the “provision of ammunition” and “refuelling and maintenance of aircraft ready to take off for combat operations”
		Transportation	
		Repair and Maintenance	
		Medical Services	
		Communications	
		Airport and Seaport Services	
		Base Services	
		Lodging	
		Storage	
		Use of Facilities	
		Training Service	
		Construction	
Search and Rescue Activities			
Ship Inspection Operations (those set forth in the Ship Inspection Operation Law)			

Figure 5-7 Measures of JSDF Personnel under the International Peace Support Act

(Source: based on *Defense of Japan* (2017, p.249))

Again, no discussion was held in the Diet regarding the quality and quantity of measures which JSDF personnel may use during reconstruction activities although the International

Peace Support Act allows Japan to provide ammunition.

5. 4. *Jus ad Bellum*

Based on analyses of Diet reports, this section will examine whether the GOJ considered the normative principles of *jus ad bellum*. It will first examine whether Japan's right intention for participating in international military operations fit with the principle of necessity in *jus ad bellum*. As seen in Chapter Two, having the right intention is an essential factor required to justify the use of force; therefore, the GOJ needs to consider this before participating in international military operations. This section will then examine whether the GOJ considered the principle of proportionality in *jus ad bellum*. For the purposes of these two examinations, the hypothetical cases established in 5.2. will be applied where necessary. By this means, we will clarify whether the GOJ considered the normative principles of *jus ad bellum* when discussing the development of Japanese security legislation in the Diet.

5. 4. 1. The Principle of Necessity

The GOJ discussed Japan's legitimacy in participating in international military operations in two parts, because there are two different situations of engaging in international military operations: Japan's participation to international military operations to protect its survival and peoples and Japan's participation to international military operations to

provide logistical support to its allies. This subsection will, therefore, consider each of situations so as to separately examine whether the GOJ took the principle of necessity in *jus ad bellum* into consideration when related discussions were held in the Diet.

The first situation in which the GOJ participates in international military operations is “when an armed attack against Japan occurs or when an armed attack against a foreign country that is in a close relationship with Japan occurs and as a result threatens Japan’s survival and poses a clear danger to fundamentally overturn people’s right to life, liberty, and pursuit of happiness” (the Government of Japan, 2016). Referring to the principle of necessity in *jus ad bellum*, Japan needs to have the right intention to commit international military operations. According to Walzer, the international military operation should be the only way for Japan to maintain peace and security. As the TNC specifies “when there is no other appropriate means available to repeal the attack,” it is evident that the GOJ considered the principle of necessity before participating in international military operations. From Rawls’ perspective, we may say that the GOJ considered the moral-philosophical perspectives of Japan’s participation in international military operations because the purpose of such operations is to rescue Japan from the “danger of fundamentally overturning people’s right to life, liberty and pursuit of happiness” (the Government of Japan, 2016). Referring to May’s theory, it combines the conditions specified by Walzer and Rawls; therefore, it is possible to justify Japan’s participation in international military operations. The result of examination demonstrates that the GOJ has focused on the right intention for participating in international military

operations when developing its security regime. However, this chapter points out that, by examining the Diet records, Cabinet members proposed the possibility for Japan to take a pre-emptive attack (see 5.3.1.). Although the government official replied that the government will decide based on the situation, the Cabinet specified that there is a possibility of engaging in international military operations without being attacked by offender. Japan's possibility of engaging in international military operations without being attacked by offender, therefore, brings the conclusion that the GOJ did not sufficiently consider the principle of necessity in *jus ad bellum*.

The second situation in which the GOJ participates in international military operations is "when the situation essentially affects Japan's peace and security" (see 5.3.1. (b)). Compared with the former situation, Japan would not participate in this international military operation directly: instead, Japan is attempting to provide logistical support to the military of its close-relationship countries, such as the US military. Again, the GOJ sets the condition to provide logistical support to the US military, for instance, by referring to the first condition of the TNC: "when an armed attack against Japan occurs or when an armed attack against a foreign country that is in a close relationship with Japan occurs and as a result threatens Japan's survival and poses a clear danger to fundamentally overturn people's right to life, liberty, and pursuit of happiness" (the Government of Japan, 2016). Compared with the former situation, the Cabinet is, at the moment, not planning to provide logistical support unless armed attack occurs against its close-relationship countries; therefore, the GOJ seemingly has considered the principle of necessity in *jus*

ad bellum.

By examining the two possible situations in which Japan would participate in international military operations, this subsection concludes that the GOJ should have been considered the principle of necessity in *jus ad bellum* when developing the Japan's Legislation for Peace and Security.

5. 4. 2. The Principle of Proportionality

As the quality and quantity of military force used by Japan is specified with the words “minimum extent necessary” use of force, the GOJ seemingly considered the principle and proportionality when enacting Japan's Legislation for Peace and Security. However, this chapter will point out that the lack of consideration given the quality and quantity of operations in which Japan would participate.

The first reason for this conclusion is that the GOJ has depended on the words “minimum extent necessary” use of force. These words indicates that the GOJ concerned the quality and quantity of operations in which Japan would participate; however, as the response from Kishida demonstrates, the quality and quantity of operations was not an important factor for consideration before participating in international military operations. All three just war theorists mentioned, in terms of quality and quantity, the damage incurred by the operations should take human rights into consideration; however, the GOJ

seemingly paid no attention to this, as Kishida's comment demonstrates.

The second reason is that the GOJ seemingly did not consider the quality and quantity of logistical support which Japan would provide. When related discussions occurred on providing logistical support to Japan's close-relationship allies, no questions were asked by Diet members regarding the quality and quantity of support to be provided. Thus, it is possible to conclude that the GOJ did not consider about the principle of proportionality in *jus ad bellum* when discussing Japan's Legislation for Peace and Security.

5. 5. *Jus in Bello*

This section will separately consider the two normative principles of *jus in bello*. It will first examine the roles of JSDF personnel with respect to the principle of necessity in *jus in bello* and then apply the principle of proportionality to the extent of the JSDF's weaponry in international military operations. As the use of force must be balanced or proportional to be justified from a moral-philosophical perspective, it is necessary to consider the GOJ's discussions when passing security-related bills. Through these two examinations, we can establish whether the GOJ sufficiently considered the moral-philosophical perspectives in related discussions in the Diet.

5. 6. 1. The Principle of Necessity

According to GOJ reports, JSDF personnel can take military action to protect their lives or their weapons or equipment (the Government of Japan, 2016). Based on this statement, it is necessary to clarify whether the GOJ's policy accords with the principle of necessity in *jus in bello*; in other words, whether the GOJ considered the potential violation of the human rights of North Korean civilians through military action.

According to the GOJ's statement, protecting the people of Japan or South Korea is more important than protecting North Koreans because Diet members only paid attention to the lives and bodies of JSDF personnel and collaborators. Thus, it demonstrates a lack of discussion regarding the protection of North Korean soldiers or civilians. In terms of protecting human rights, this neglected issue is one of the significant aspects of the normative principles in *jus in bello*. However, the GOJ did not consider the necessity to protect human rights in general. This tendency is also evident in the GOJ's dispatch of JSDF personnel to participate in OIF (see 4.3.1. and 4.4.2). Furthermore, the interviewees did not answer the related questions because they believe that JSDF personnel would not use military weapons against others to violate the rights of civilians in North Korea without any evidence. Overall, it can be concluded that the GOJ did not consider the principle of necessity when discussing security-related bills.

5. 6. 2. The Principle of Proportionality

As analysed in 5.4.4., the GOJ established the quality and quantity of JSDF weaponry in such operations based on the principle of “the minimum and only necessary use of force.” However, with regard to JSDF measures and weapons in such operations, the GOJ did not clearly specify either qualitative or quantitative aspects. Notwithstanding the difficulty of determining the quality and quantity of weapons that JSDF personnel would use during international military operations, the GOJ could have specified the situation in which military force would be used against others. However, seemingly adopting the position that it was more important to protect the human rights of Japanese and/or South Koreans than those of North Koreans, the GOJ evidently did not properly consider the quality and quantity of appropriate measures to accomplish this goal. Thus, while in the previous section we found that the GOJ did not consider the principle of proportionality in *jus ad bellum*, here we see that it also failed to consider the principle of proportionality in *jus in bello*.

5. 6. *Jus post Bellum*

The final stage, *jus post bellum*, focuses on whether the GOJ considered the normative principles thereof. As the International Peace Support Act allows Japan to provide logistical support to maintain international peace and security, this section will examine whether the GOJ considered the normative principles of *jus post bellum* when holding

discussions in the Diet.

This section will be divided into two to separately consider the two normative principles of *jus post bellum*. First, it will examine whether the conditions necessary for the GOJ to provide logistical support to maintain international peace and security fit with the normative principle of necessity. This scrutiny is necessary as Japan's support could potentially violate the principle of non-intervention in the international affairs of other countries (see Article 2.7. of the UN Charter). Second, it will examine the extent to which the GOJ's decision accords with the normative principle of proportionality in *jus post bellum*, based on the possible measures to be taken by JSDF personnel during reconstruction activities. These two examinations will clarify whether the GOJ's discussions in developing Japan's Legislation for Peace and Security was moral-philosophically justified.

5. 7. 1. The Principle of Necessity

The principle of necessity will clarify whether the GOJ considered it necessary to contribute to PKO activities as stipulated in the International Peace Cooperation Activities. Since the UN Charter requires all members to follow the principle of non-interventionism, a state should not engage in PKO activities unless required to do so by the country in which the reconstruction activity was conducted. The widening range of situations in which Japan can contribute to PKO activities will be examined in this section.

The new condition whereby Japan can participate in reconstruction activities is when “(...) specified by a Cabinet order” (the Government of Japan, 2016). This statement demonstrates that Japan can participate in reconstruction activities not only pursuant to request from international organisations and the pertinent country but also based on a decision of the Japanese Cabinet. Therefore, it is difficult to conclude that the GOJ has been considered on the principle of necessity in *jus post bellum*.

5. 7. 2. The Principle of Proportionality

The second principle, proportionality, examines whether the GOJ considered the scale and contents of the support Japan will provide for reconstruction activities. Since reconstruction activity should be conducted pursuant to the request of the host country, the host should take control. However, it seems that no debates occurred on the scale and contents of the support to be provided by Japan for reconstruction activities. Moreover, none of the interviewees considered this issue. Thus, in the absence of related discussions in the Diet, this dissertation infers that the GOJ did not consider the principle of proportionality in *jus post bellum* when the security-related bills were brought to the Diet. Overall, the GOJ did not recognise that, as regards the normative principles, the scale and contents of the support Japan will provide for reconstruction activities could be problematic.

5. 7. Conclusion

Since this chapter's analyses were based on hypothetical situations, it was difficult to examine whether the GOJ considered the normative principles of Just War Theory. To conclude this chapter, this section will illustrate what the GOJ failed to consider in enacting Japan's legislation for peace and security.

First, the GOJ did not sufficiently consider the principles of *jus ad bellum*, despite holding many discussions on this issue in the Diet. While Diet members did focused on the principle of necessity, it seems that they did not consider the principle of proportionality to the same degree. In particular, though many arguments were held in the Diet on the principle of proportionality, the GOJ seemingly did not consider the scale and content of the support Japan would provide when participating in international military operations. Some may say that Diet members focused on the principle of proportionality based on their frequent use of the term “minimum and only necessity use of force;” however, this is seemingly insufficient because this term does not specify the quality and quantity of the operation.

Second, the examinations on *jus in bello* demonstrates that the GOJ did not consider the protection of human rights in general. Diet reports demonstrate that the GOJ paid attention to the safety of JSDF personnel; however, the normative principles of *jus in bello* specify that innocent peoples should not be violated. This means that the GOJ

should have considered not violating or harming the rights of North Koreans in general when JSDF personnel engage in international military operations to protect the survival of Japan and its peoples. Although the normative principles set limits on whom may be attacked, the GOJ seemingly did not pay attention to this issue. The lack of consideration on violating innocent people might be due to the confidence that JSDF personnel would not use military weapons against innocent peoples; however, the GOJ should have considered the possibility of violating innocent people when participating in international military operations.

Finally, the examinations of *jus post bellum* revealed that the GOJ did not consider why logistical support should be provided for reconstruction activities. Although the GOJ should have clarified the criteria for participating in such activities, it seems to perceive that so doing to maintain international peace and security is always a positive action, despite the potential violation of the tenet of non-interventionism.

In conclusion, the GOJ neglected moral-philosophical discussions that should have been included in its decision-making process on participating in international military operations.

Chapter Six. Conclusion

This dissertation has focused on whether the GOJ took normative principles into consideration when deciding to participate in international military operations. Through the evidence presented in the preceding chapters, this dissertation has reached the conclusion that the GOJ did not consider the moral-philosophical issues sufficiently. This result supports the fact that there is no moral-philosophical evaluation research on Japan's participation in international military operations: although jurisprudence researchers have evaluated the US's or the UK's decisions to conduct international military operations from the legal and moral-philosophical perspectives, Japan's participation has never been examined. Moreover, the lack of moral-philosophical consideration is evident from the interviews conducted for this dissertation (see Appendix): some of the interviewees did not feel comfortable with the normative principles of Just War Theory, despite playing an important role in decision-making on, particularly Japan's security policy. To conclude this dissertation, this chapter will demonstrate how this dissertation affects the research on Japanese Studies and jurisprudence.

This chapter comprises six sections: reassessment of previous studies; recapitulation of the methodology; the findings from the examinations; research contributions; and future research. The first section will reassess the previous studies reviewed in Chapter One. It will then explain the normative principles of participating in international military operations. Based on the basic knowledge required to complete this

research, this chapter will demonstrate the gap between the GOJ's intentions and the moral conceptions shared internationally on international military actions. To clarify this gap, the third section will draw on the research results from the three case studies and then summarise the contributions to two different fields of study: jurisprudence and Japanese Studies. The final section of the conclusion, and indeed this dissertation itself, will demonstrate the necessity of continuing this research in light of the contributions of this dissertation.

6. 1. Reassessing the Literature

This research was motivated by the lack of moral-philosophical consideration when Japan participates in international military operations. This is in spite of the fact that some politicians in Western countries, such as George W. Bush, Tony Blair, and Michael Ignatieff, have adopted the normative principles based on Just War Theory when making the decision to participate in international military operations. This dissertation began by introducing and reviewing the existing literature on Japan's participation in international military operations. It noted the GOJ's evident lack of moral-philosophical examination when making the decision to participate in international military operations.

6.1.1. Legal Approach

This dissertation first reviewed what discussions have been held in Japan with regard to

the legalities of Japan's participation in international military operations. Japanese scholars, particularly specialising the JCL, tends to focus on whether the GOJ's decision would violate Article 9 of the JCL, which specifies the renunciation of war. This section will summarise these two conflicting positions to clarify how legal scholars perceive Japan's participation in international military operations.

The idea of absolute renunciation of war is widely supported by Japanese jurists, including legal scholars, who believe it is important for all Japanese people to follow the JCL's fundamental principles. Since pacifism (*heiwa shugi*) is specified in the Preamble and Article 9 of the JCL, they contend that Japanese people should strictly uphold the idea of pacifism as written in the Constitution. Overall, then, these scholars believe that the GOJ's decision to participate in international military operations violates the JCL.

While proponents of the absolute renunciation of war claim that the GOJ's decision to participate in international military operations is illegitimate, those who adopt the position of limited renunciation of war contend that those fundamental principles are only guidelines, and that strict adherence to their written provisions is not required. Therefore, they believe that the decision to participate in international military operations should depend on the situation of international society and the situation of Japan.

In addressing practical cases, the latter position has been widely supported by Diet members, particularly LDP members. Examining previous cases of Japan's

participation in international military operations reveals a distinct gap between the theories of the JCL and how its provisions are applied in practice: while the theory specifies the necessity of strictly following the JCL's written provisions, the GOJ has established its international policy without considering the JCL's fundamental principles.

6.1.2. Political Approach

While legal scholars have examined whether the GOJ's international policy violates the JCL, political scientists have focused on how Japan's diplomatic strategies can be analysed using IR theories. This dissertation has focused on two IR theories, realism (neo-realism), liberalism (neo-liberalism), and constructivism, and reviewed how IR scholars evaluate Japan's behaviour when participating in international military operations.

Focusing on the first IR theory, realism (neo-realism), Japan's behaviour when participating in international military operations can be explained based on the given situation. "Security dilemma" and "fear of abandonment," the conceptual ideas of realism, are sufficient to demonstrate why Japan seeks to strengthen its relationship with the US. While realists explain the strengthening of this relationship from the perspective of "security dilemma" and "fear of abandonment," neo-realists see it as being due to the US-Japan Security Treaty. As the US military has remained in Okinawa, Japan has arguably depended on the US for national security. In this context, the US has applied invisible pressure or external pressure (*gaiatsu*) upon Japan.

The liberalism-derived theory, on the other hand, explains Japan's behaviour in participating in the UNPKO. Pursuing the common goods of maintaining international peace and order is the key idea of liberalism; therefore, the GOJ has put the brake on its military reform and the possession of nuclear weapons.

The last IR theory reviewed in this dissertation is constructivism. The constructivism-derived theory develops to review Japan's security policy by combining the ideational factors and the material factors. By combining these two factors, the constructivism-derived theory reviews that Japan's security policy sets the two different objectives: setting the "culture of anti-militarism" to reassure Japan's neighbourhood countries and expanding its military capability to show the physical power.

Although two different approaches have been taken to review Japan's participation in international military operations, the existing literature have not answered to the research question set for this dissertation: "whether or not the GOJ took the normative principles of Just War Theory into consideration when deciding to participate in international military operations." By answering this research question, this dissertation aims to review whether the GOJ's perspectives on participating in recent international military operations accord with the normative principles of countermeasures to international military operations.

6. 2. Methodology: Just War Theory

To answer the research question proposed above, it is necessary to clarify what elements states should consider when deciding to participate in international military operations. As the basis of the normative principles for international military operations, Just War Theory seems the most suitable methodology because it has influenced public international law on wars. Therefore, the principles of Just War Theory provided the frameworks for this dissertation's methodology.

Focusing on four scholars, Michael Walzer, John Rawls, Larry May, and Brian Orend, this dissertation elaborated the elements of Just War Theory that are applicable and relevant to the contemporary situation. These scholars developed Just War theory through three stages: *jus ad bellum*, *jus in bello*, and *jus post bellum*. In each stage, they developed their own theories to explain the conditions and situations in which states and soldiers may take military action against an enemy. To organise each aspect of the theory, this dissertation adopted two principles that are applied by public international law to elaborate the legitimacy of war and are commonly recognised in customary international law: the principle of necessity and the principle of proportionality. By combining the two applicable principles of public international law with the three stages of Just War Theory, this dissertation developed the methodological frameworks which is used in the examinations.

6. 3. Findings from the Examinations

Based on this research methodology, this dissertation examined whether the GOJ took the normative principles into consideration. To clarify the Japanese security regime, this dissertation used three empirical cases as the target of examination: OEF, OIF, and Japan's legislation for peace and security. By examining Diet discussions in each case, this dissertation found a gap between the normative principles of Just War Theory and the governmental decision to participate in international military operations. Therefore, this section will focus on each of the findings to clarify what the GOJ should have considered when deciding to participate in international military operations.

6.3.1. Japan's Participation in Operation Enduring Freedom

Commonly called the Afghanistan War of 2001, OEF, was conducted in retaliation for 9/11. Most scholars and politicians regard the military force of OEF as having a just cause; however, for several reasons, it is difficult to justify OEF from the moral-philosophical perspective.

The first reason is due to the lack of justification for OEF. Although some Diet members noted the necessity of considering this issue before deciding to participate in OEF, the Japanese Cabinet did not address this point clearly. Instead of considering the right intention for attacking Afghanistan, the Japanese Cabinet focused on responding to

the US's request by participating in OEF. In addition, the discussions on enacting the ATSMML concerned how Japan would participate in OEF without revising the JCL. By analysing the related discussions in the Diet, it is clear that OEF's moral justification was not taken into consideration.

The second reason for concluding that the GOJ did not take the normative principles into consideration is the lack of attention paid to the protection of human rights. The GOJ particularly focused on protecting the lives of JSDF personnel, contrary to the normative principles that states should not violate human rights in general. If the OEF participation was premised on maintaining international peace and security, the GOJ needed to consider the non-violation of human rights in general, particularly the rights of civilians in Afghanistan. Thus, the GOJ seemingly neglected to consider the moral-philosophical perspective when deciding to participate in OEF.

6.3.2. Japan's Participation in OIF

Compared with the previous operation, a large number of scholars and politicians disagree with OIF because there was no right intention for attacking Iraq. Although controversial among the majority of scholars and politicians, the GOJ decided to provide logistical support to the US because the Koizumi administration believed that they had adopted the right intention for attacking Iraq. However, it is difficult to justify Japan's participation in OIF from the moral-philosophical perspective for the following reasons.

First, there was a lack of legal and moral-philosophical justification for attacking Iraq. Iraq did not attack any UN members before OIF was conducted; therefore, there is a higher possibility that the attack by the US and its allies comprised an illegal use of force. The lack of legal justification for attacking Iraq was mentioned in the Diet; however, the Koizumi Cabinet did not pay sufficient attention to the issue well when deciding to participate in OIF.

Second, there was a lack of consideration when deciding to participate in reconstruction activity. Since no official requests for participation were made by the US or Iraq, the GOJ made an autonomous decision to participate in the reconstruction activity. This behaviour can be explained with IR theory, particularly neo-liberalism; however, this dissertation noted the necessity to consider non-interventionism, as specified in the UN Charter. The examination demonstrates the lack of consideration given to the principle of *jus post bellum*.

6.3.3. Japan's Legislation for Peace and Security

The final case study on which this dissertation focused was Japan's Legislation for Peace and Security. By enacting this statute, Japan expanded its security regime, enabling it to participate in international military operations without enacting any temporary statutes, as had been required to participate in OEF and OIF. Since Japan was yet to apply the

statute to any concrete cases, this dissertation established hypothetical cases to examine whether the GOJ took the normative principles into consideration when enacting Japan's Legislation for Peace and Security.

Through this examination, it was noted that the GOJ did not sufficiently consider the principles of *jus ad bellum*. Referring to the UN Charter, Diet members focused on the principle of necessity; however, they did not consider the principle of proportionality to the same degree. Diet members have often cited "minimum and necessary use of force" to demonstrate that they have paid attention to the principle of proportionality; however, the use of this term does not reflect that Diet members took the principle of proportionality in *jus ad bellum* into due consideration.

The second issue noted is the lack of consideration given to protecting human rights in general. Referring to *jus in bello*, the GOJ should have considered non-violation of human rights while participating in international military operations; however, Diet members only considered the human rights of JSDF personnel and its collaborators. As the normative principles set limits on attacking innocent peoples, the GOJ should have considered whom to attack and whom to protect when the related discussions were held in the Diet.

The third issue is the lack of consideration given to the reason for participating in reconstruction activities. IR theories have been used to review Japan's participation in

reconstruction activities, such as the UNPKO, as pursuing common interests. However, this dissertation noted that participating in reconstruction activities without requests is not justified from the legal or moral-philosophical perspectives. The UN Charter specifies non-interventionism; therefore, participating in reconstruction activities without requests might violate this principles. The GOJ seemingly believes that participating in reconstruction activities always comprises good behaviour: however, this dissertation addressed the necessity to consider whether Japan should participate in reconstruction activities and how much degree of support Japan would participate in such activities.

6. 4. Research Findings

While ascertaining whether the GOJ took the normative principles of Just War Theory into consideration when deciding to participate in international military operations, this dissertation has made several contributions to two fields of research: jurisprudence, particularly Just War Theory, and Japanese Studies. This section will expand on these contributions.

6. 2. 1. Contribution to Jurisprudence

This dissertation has made three contributions to Just War Theory: first, it has summarised the influence of Just War Theory on current international law on war by analysing classical Just War Theory; second, it has elaborated the normative principles of Just War

Theory by classifying current works according to two principles required in the so-called customary international law, which comprise the habitual practice between countries; and third, it has provided an in-depth analysis of Japanese cases yet to receive sufficient attention from jurisprudence scholars.

The first contribution to Just War Theory is in demonstrating its influence on the current international law on wars. Prior research on Just War Theory has been developed by individually reviewing the works of philosophers and jurists, such as Cicero, St. Augustine, St. Thomas Aquinas, Francisco de Vitoria, Francisco Suarez, and Hugo Grotius; however, this dissertation discussed the influence of their works on the current international law on wars. As introduced in Chapter Two, the origins of Just War Theory lie with Cicero, who developed his theory with reference to the duties of people; however, St. Augustine and St. Thomas Aquinas developed their respective Just War Theories based on Christianity. Furthermore, their respective discussion demonstrate that Just War Theory was originally constructed for application to the case of murders committed within the state; therefore, it was sufficient for them to develop their theories based on religious ideas because it is comfortable for peoples with understanding the theory. Later, Francisco de Vitoria developed his Just War Theory to apply not only to Christians but also to non-Christians. This comprised a significant change and almost certainly influenced public international law on wars because it applied to all global citizens. Commencing with Francisco de Vitoria, Just War Theory developed as a draft of public international law on wars. However, few jurisprudence scholars today have examined the

longitudinal development of Just War Theory and, therefore, the contribution of this research in so doing is beneficial not only for jurisprudence but also public international law on war.

The second contribution of this research is in adopting two principles required by customary international law on war, namely necessity and proportionality, to elaborate the contemporary Just War Theory. The theories developed by four different researchers, Michael Walzer, John Rawls, Larry May, and Brian Orend, have been formulated under three categories: *jus ad bellum*, *jus in bello*, and *jus post bellum*; however, each author developed their own factors to identify the legitimate use of force. Walzer, for instance, developed his theory of *jus ad bellum* by building on the theory of aggression, according to which, “nothing but aggression can justify war” (Walzer, 2006, p. 62); therefore, states can exercise the right to self-defence to repel an aggressor. Rawls, on the other hand, developed his theory of *jus ad bellum* as retaliation to aggressors who cannot follow the “Laws of the Peoples” (Rawls, 2006, pp. 89–90). Finally, May’s theory discussed when the right to self-defence can be exercised; however, he paid attention to non-violation of non-combatants because it is difficult to identify today whom the combatants are. This dissertation then elaborated and combined the various Just War Theories of these scholars to ascertain a common sense in contemporary Just War Theory. This elaboration is also an efficient way to demonstrate the differences between the theories, as each scholar developed different terms. This effort is also believed to be important for both the fields of jurisprudence and of public international law on war because few prior works have

elaborated on contemporary Just War Theory.

The third contribution is to bring Japanese cases into the examination. Michael Walzer and John Rawls, in particular, examined whether the global hegemony states, such as the US, have taken the normative principles into consideration when determining whether or not to conduct international military operations. For example, they demonstrate why US President Truman's decision to drop atomic bombs on Hiroshima and Nagasaki was not moral-philosophically justified (Rawls, 2006, pp. 100–2; Walzer, 2006, pp. 480–9). Furthermore, Walzer examined whether or not the US commitment to OEF was justified by applying his own Just War Theory to the situation (Walzer *et al.*, 5-16, pp. 5–10). However, these authors did not apply their theories to cases in which non-hegemonic states, such as Japan and South Korea, participate in international military operations. Furthermore, no Japanese scholars of jurisprudence have examined whether Japan's decisions to provide logistical support to the US military meet with the normative principles of Just War Theory. As Just War Theory comprises the normative principles on international military operations, their theories should have been widely accepted by peoples in non-hegemonic states, as Francisco de Vitoria, Francisco Suarez, and Hugo Grotius did; however, this dissertation has reached the conclusion that the normative principles of Just War Theory have not been accepted, at least by the GOJ. This result is essential for jurisprudence scholars because it means that Just War Theory either cannot be defined as the “norm” or is not influential among global citizens.

6. 2. 2. Contribution to Japanese Studies

While this dissertation has made three contributions to jurisprudence, it has also made two contributions to the field of Japanese Studies: first, it has identified a gap between the elements considered by the GOJ and those it should have taken into consideration when setting international and national security policies; and second, it has suggested analysing Japanese security policy from the perspective of moral-philosophical theories.

Regarding the first contribution, it has been clarified that the GOJ has only considered pursuing Japanese national interests by participating in international military operations. Under Just War Theory, however, governments should consider protecting human rights before engaging in international military operations. Following this theory, Japanese Diet members should have considered these normative principles when deciding whether or not to participate in OEF and OIF. Despite the essential nature of the normative principles for setting national and international security policies, the interviewees confessed that they had never heard of Just War Theory. This might reflect their lack of knowledge; however, it is necessary to further investigate the moral-philosophical criteria applied by Diet members, particularly on the issue of maintaining international peace and security.

The second contribution is in demonstrating the necessity to evaluate Japanese security policy not only from IR perspectives but also from the moral-philosophical

perspective. International military operations, which are the focus of this dissertation, are one of the significant issues to be solved in international society. It is believed that IR theories, such as realism, liberalism, and constructivism, are developed to review states' behaviour to security policy. Before participating in any international events or phenomena, such as international military operations, however, this dissertation points out that governments should consider whether such operations violate human rights in general because this is the fundamental principle that needs to be considered before using military force against others. As the constructivism-derived theory pays attention to the ideational factors as well as the material factors, this dissertation why is the moral-philosophical evaluation, which is the basis of the "ideational factor" in constructivism, less active in examining Japan's participation in international military operations? By examining Japan's participation in international military operations from the moral-philosophical perspective, this dissertation has contributed by demonstrating the necessity for researchers in Japanese Studies to pay attention to the normative principles of Just War Theory. By influencing the necessity to take the normative principles of Just War Theory into consideration when determining the dispatch of JSDF personnel, Diet members and government officials in Japan will become familiar with Just War Theory and hopefully focus on its legitimacy when participating in future international military operations rather than focus on strengthening the relationship with the other nations, e.g. the US to pursue national interests. Since Japan has been in dispute with Russia over the Kuril islands, with China over the *Senkaku (Diaoyu)* Island, and with South Korea over the Liancourt Rocks, the awareness of the normative principles of Just War Theory may

find a rationale solution in solving territorial disputes. Also, the normative principles of Just War Theory may give a guideline for Japan in dealing with North Korea. Since Japan has been conscious of being attacked by North Korea, as it is identified as offender in formulating in the hypothetical situations in Chapter Five, the awareness of the normative principles of Just War Theory might give a suitable resolution in dealing with the issue on North Korea.

6. 5. Research Implications

Based on the research contribution, this section will demonstrate the research implications for both the fields of jurisprudence and Japanese Studies. As a research implication, this dissertation leaves the problem of developing a Just War Theory which is widely accepted by global citizens.

The three case studies demonstrate that Diet members favoured bringing to the discussion the legal legitimacy and political factors. However, this dissertation notes the necessity to consider the normative principles provided by Just War Theory, which is the basis of current international law on wars.

The necessity of following the normative principles of Just War Theory can be explained using the case of Japan because Japan has experienced these principles in its reconstruction after WWII. Establishing a new constitution, for instance, is an example

of the reconstructing work that occurred as the Empire of Japan collapsed. Regarding Japan's reconstruction after WWII, a large number of people in the victor states, such as the US, wanted to execute Emperor Hirohito without war trials or to accuse him of war crimes (Leavitt, 2015, p. 319). However, General Douglas MacArthur believed that the key to securing Japan's future was to maintain the Emperor *in situ*; thus he made the decision to leave the Imperial system in place, against the will of the US (Harvey 2006, 331). MacArthur also had great insight into Japanese identity: although he was uncomfortable playing a dignified person, his behaviour helped Japan to begin its reconstruction. Through this characteristic, we may deduce that MacArthur respected Japanese culture.

Since this dissertation does not focus on Japan's reconstruction after WWII, we will not go into depth as to whether or not the work of GHQ was successful; however, it is possible to emphasise the necessity of respecting the culture of a defeated state when victor states are engaging in its reconstruction. While respecting the native culture is a rough idea that should be followed, the principles of necessity and proportionality of *jus post bellum* will provide a theoretical foundation for victor states when engaging in reconstruction activities.

To summarise, the normative principles of Just War Theory are the basic idea of public international law on war: the idea of what principles states should follow to legitimate the use of force (*jus ad bellum* and *jus in bello*), and, simultaneously, what

principles victor states should follow to legitimate the reconstruction activity of defeated states (*jus post bellum*). Following only the regulations of public international law on war is not always sufficient to legitimate a role in international military operations because there are several situations in which public international law is not applicable. For instance, it is difficult to apply public international law on war to engaged in international military operations to eliminate the numbers of the so-called new wars, identified by Mary Caldor in the book . However, the normative principles of Just War Theory are applicable on all occasions in international military operations.

6. 6. Future Research

Although this dissertation has made various contributions to the fields of jurisprudence and Japanese Studies, further research should be conducted on Japan's security policies because Japan has applied its Legislation for Peace and Security to dispatch JSDF personnel to South Sudan, and is planning to dispatch JSDF personnel to Egypt by applying the legislation sooner. Furthermore, there have been several well-known international conflicts between Japan and its neighbouring countries, such as China, North Korea, South Korea, and Russia, while the current situation in the South China Sea remains unstable. To solve these international conflicts between Japan and its neighbouring countries, there is an increasing possibility that Japan may participate in international military operations. Since this dissertation has clarified the GOJ's past failures to sufficiently consider the normative principles of Just War Theory, these

findings should be reflected in future international military operations in which Japan might participate. Finally, this dissertation would like to touch upon the case of dispatching JSDF personnel to South Sudan; in doing so, we will clarify what elements which the GOJ should have considered, by applying the principle of legitimacy for peace and security, when deciding to dispatch JSDF personnel.

The decision to dispatch JSDF personnel to South Sudan occurred during the Noda administration (term of office: 2 September 2011 - 26 December 2012) in response to a request from the UN (Ministry of Foreign Affairs of Japan, 2011). The request was made by Ban Ki-moon, the former Secretary-General of the UN (term of office: January 2007 - December 2016) because the situation in South Sudan was too unstable for civilians to live in peace and order (Ferrie, 2011). This unstable situation was caused by the independence of the states from Sudan in 2011 (Al Jazeera, 2011), although the majority of people agreed that South Sudan was independent from Sudan (Southern Sudan Referendum 2011, 2011). In response to a request from the UN, the Kan Cabinet (term of office: 8 June 2010 – 17 September 2010) first decided to dispatch two JSDF personnel to South Sudan: one specialist in military logistics and one person trained in collecting information (Ministry of Defense, 2011).

Based on the request from the UN which was made on 21 September 2011, the then Defense Minister, Ichikawa Yasuo, held a defence meeting on 22 September to prepare headquarters for the dispatch to South Sudan. The operation mainly comprised

nation-building; therefore, the GOJ could apply the International Peace Cooperation Law. As no temporary statute was enacted to send JSDF personnel to South Sudan, it only took 41 days for the GOJ to decide in favour of the dispatch. During these 41 days, however, several Diet members queried Japan's justification for participating in the operation (Ishiba Shigeru, 27 September 2011; Tanioka Kuniko and Satō Masahisa, 27 October 2011 and, Saitō Tetsuo and Shigeno Yasumasa, 1 November 2011) and asked about the possibility that JSDF personnel would be armed (Ishiba Shigeru and Ishii Keiichi, 27 September 2011 and Inoguchi Kuniko, 27 September 2011). Compared with the numbers of questions regarding Japan's right to participate in the operation, which is named the United Nations Mission in South Sudan (UNMISS,) more Diet members were concerned with how meaningful Japan's participation in UNMISS was (Noda Yoshihiko, 27 September 2011; Ichikawa Yasuo and Genba Koichirō, 21 October 2011; Watanabe Yoshihiko, 25 October 2011; Genba Koichirō and Ichikawa Yasuo, 25 October 2011; Yamauchi Kōichi and Fujimura Osamu, 26 October 2011 and Ichikawa Yasuo, 27 October 2011). By scanning the minutes of the Diet, the concerns of Diet members were twofold: the possibility of dispatching JSDF personnel to the battlefield and the possibility of violating Japanese regulations.

Following the enactment of Japan's Legislation for Peace and Security, a new order was provided, specifying that JSDF personnel would carry out a *kaketsuke keigo* operation: this order provided for the possibility of JSDF personnel using military weapons when there is an imminent threat to Japanese civilians in South Sudan (Nihon

Keizai Shimbun, 2016). Although the JSDF was given the order to carry out the operation, the units of the Japanese PKO were withdrawn from South Sudan on 25 May 2017 (*Sankei Shimbun*, 2017) for reasons that are not yet clear. However, the Chief Cabinet Secretary specified as follows: “(...) With South Sudan entering a new stage of nation building, Japan considers that the engineering activities undertaken by the JSDF in Juba have now come to a close” (Suga Yoshiie, 10 March 2017). Although Japan had accomplished its operation in South Sudan, the UNMISS had been active since 2011; therefore, it is believed that the reason proposed by the GOJ for withdrawing the JSDF from South Sudan was *tatemaie* (*Sankei Shimbun*, 2017).

By skimming through Diet records on Japan’s participation in UNMISS, it emerges that the GOJ devoted less consideration to the normative principles which the government should have considered before participating in international military operations. The GOJ is now considering about dispatching the Ground Japanese Self-Defence Force to join in the Multinational Force and Observers, which is currently active in Egypt. To participate in this operation, the GOJ is planning to identify the case as an international peace cooperative situation engaged in cease-fire monitoring activity between Egypt and Israel (*Tokyo Shimbun*, 2018). Again, there is the possibility for JSDF personnel to carry out a *kaketsuke keigo* operation; therefore, the GOJ should consider the right intention or a just cause for participation. The GOJ should also consider the quality and quantity of roles played by JSDF personnel during the operation. According to an article by *Tokyo Shimbun*, the GOJ is planning to dispatch several JSDF personnel

to Egypt in early 2019. Despite the governmental decision to dispatch the JSDF to Egypt, no related discussion was held in the Diet.

Thus, Japan's Legislation for Peace and Security could be said to have an advantage for the GOJ because this legislation does not require Japan to prove its right intention for participating in international military operations; however, the legislation also has a disadvantage in that it simplifies the decision-making process for participating in international military operations. Further research should be conducted on Japan's application of Legislation for Peace and Security to participate in international military operations to ensure that the GOJ does not make an irreversible error, such as violating human rights in general, by participating therein.

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Appendix: Interview Dates and Interviewees

15 May 2015	Edano Yukio, member of the House of Representatives
6 July 2015	Ōno Motohiro, member of the House of Councillors
6 July 2015	Ōtsuka Kōhei, member of the House of Councillors
24 July 2015	Masuda Kōhei, former director-general of the Ministry of Defense
24 July 2015	Arimitsu Daichi, officer of the Ministry of Foreign Affairs
24 July 2015	Hamada Yasukazu, member of the House of Representatives
28 August 2015	Yonemura Mao, secretary of Ishiba Shigeru, a member of the House of Representatives